

Executive Summary for Informal Discussion

This executive summary provides an overview of the major proposed changes included in the draft copy of the 2022 version of circular DEQ-8 and is being provided to facilitate informal discussion as DEQ prepares the circular for formal notice and comment. The 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.

Circular DEQ-8, which provides stormwater design standards in subdivisions, was substantially revised in 2017. The department's experience in administering the circular over the last few years has revealed several ways in which the circular can be simplified and improved. These changes include reorganizing the circular to make it easier to use and administer. This includes transferring existing stormwater requirements in ARM 17.36.310 to the circular to consolidate all requirements in a single location. It also includes moving existing requirements from the appendices to the body of the circular to make them more obvious and easier to use.

The department also proposes several substantive changes, including allowing more projects to qualify for the simplified stormwater plan by removing the existing slope threshold requirement, easing the requirements for P.E. stormwater designs by removing the three-year expiration date for P.E. designs and removing certain certification/as-built requirements for residential subdivisions, and allowing more sophisticated complex stormwater designs to be submitted by allowing the use of best management practices (BMPs) to be submitted in addition to existing acceptable designs.

PE Requirements

Section 2.2 of the proposed circular would contain the existing requirements in ARM 17.36.310(2) regarding which storm drainage plans must be submitted by a P.E. These requirements are unchanged from the existing circular. This section also contains a cross-reference to proposed ARM 17.36.121, which would generally contain requirements for all P.E.-designed systems. However, the department proposes to remove the existing requirement in ARM 17.36.314 (proposed to be transferred to ARM 17.36.121(5)) that P.E. designs for storm water designs expire after three years. This requirement was previously adopted for storm water designs to align with time requirements for water and wastewater infrastructure. However, after further review, the department believes stormwater management is typically not prone to changes over time. For example, a retention or detention pond designed for a set precipitation or runoff event would have the same or very similar requirements today as it would five or ten years from now. Facilities that require design by a professional engineer, except for the proposed changes described in the following paragraph, would still require submittal of certification and as-builts, but would not be limited by the three-year expiring approval.

The department also proposes that certification and as-built drawings (currently in ARM 314 and proposed to be transferred to ARM 17.36.121) do not apply for retention ponds for residential lots, designed solely for, and located on the lot, where the additional runoff is generated. Certification

and as-builts are required for other stormwater facilities within those designs (retention/detention facilities serving multiple lots, roadside ditches, conveyance structures, etc.). For instance, if a subdivision included eight lots each with a retention pond, a road with roadside ditches and a shared retention pond for the stormwater runoff from the road, the department would require the applicant to submit certification and as-builts for the shared stormwater facilities: roadside ditches and the shared retention pond for the road, but not the individual residential retention ponds. Since the lots are often sold at staggered intervals, the department would not require certification and as-builts on those retention ponds located on residential lots that meet the stated criteria. This requirement better accounts for the real-world timeline for such development.

Simplified Plans

Section 3.2 of the proposed circular provides the requirements for a simplified plan. The simplified plan in existing circular DEQ-8 was intended to provide a more streamlined application and review process for simple stormwater designs. The existing rule provides that simplified plans may only be used if the impervious area within each proposed lot has a slope of three percent or less. As explained in the department's adoption notice in 2018 MAR 1588, the three percent maximum slope was adopted based on maximum erosive ditch velocities for graded loam or graded silt. The department has reevaluated this requirement since it was originally adopted and has determined that the slope requirement excludes some subdivisions that should otherwise qualify for a simplified plan. A typical simplified plan includes a single-family home with a driveway and topography that drains toward a retention pond. In these cases, where storm water drains as sheet flow to the retention pond, erosive ditch velocities are not applicable. The department considered increasing the slope requirement but ultimately decided to remove it altogether, since the remaining criteria is more relevant for determining when simplified plans may be used.

The department also proposes to require that simplified plans may be used only if the total number of lots subject to review is five or fewer. This number of lots aligns with the existing requirement that storm water plan must be prepared by a professional engineer if the subdivision application proposes six or more lots. Proposed subdivisions with six or more lots include roads which would require shared stormwater facilities and professional engineer design and hence not qualify for the simplified plan.

Given the variety of applications, and varying hydrologic conditions of developments, it is difficult to imagine every potential scenario that may arise. The department proposes to add language allowing additional clarification or information to be requested for simplified plans that would otherwise only be requested with a standard plan.

BMPs

Section 3.4 provides stormwater design requirements to manage the water quality for the "first flush" of stormwater runoff from development.

The department did not intend to allow landscaping or the initial abstraction in the SCS method to satisfy the initial stormwater facility volume in the existing circular DEQ-8. Some applicants believe these methods are allowable and therefore the department proposes add specific language stating landscaping and the initial abstraction in the SCS method are not allowed.

The department acknowledges that methods other than retention may be applicable to address the initial storm water volume. The department was contemplating integrating BMPs into DEQ-8 and received feedback from a stakeholder in 2021 requesting this option. Therefore, the department reviewed the Montana Post-Construction Storm Water BMP Design Guidance Manual (BMP Manual) to assess whether to integrate it with DEQ-8 reviews and which BMPs meet DEQ-8's design criteria. The current version of DEQ-8 does not include minimum standards for design of these types of facilities. However, an applicant might wish to use a more sophisticated system not covered by the existing standards in DEQ-8. The proposed changes to the circular would allow, those BMPs in the BMP Manual that remove 80 percent of total suspended solids (TSS) similar to plans allowed by Municipal Separate Storm Sewer Systems (MS4) throughout Montana. The types of systems in the BMP Manual that provide the minimum treatment necessary to maintain downstream water quality include: infiltration basins, bioretention, biofiltration swales, extended detention basins, wet detention basins, and proprietary treatment devices. For that same reason, the department is not allowing dispersion and permeable pavement, which do not meet that standard for capture and treatment. Given the complexity of design, and increased review necessary, designs that propose BMPs to satisfy the requirements of the initial storm water facility must be submitted as standard plans.

Parcels with Existing Approvals

The current version of DEQ-8 requires undeveloped conditions to be used in hydrologic calculations unless the lot/parcel has an existing approval and is the application is a rewrite (i.e., no new division or boundary lines changing). The department proposes to clarify that pre-developed conditions in hydrologic calculations may include impervious area previously reviewed and approved for applications for rewrite or divisions of lots that have an existing approval.