

## **17.36.101 DEFINITIONS**

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

- (1) "Accessory building" has the same meaning as defined in ARM [17.38.101](#)(3)(a).
- (2) "Approved well drilling area" is an area or areas designated on a lot layout within which a well may be drilled. The area must meet all required well location setbacks, including those for well isolation zones.
- (3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.
- (4) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.
- (5) "Campground" is defined in [50-52-101](#), MCA.
- (6) "Certificate of survey" is defined in [76-3-103](#), MCA.
- (7) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.
- (8) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.
- (9) "Condominium" is defined in [70-23-101](#), MCA.
- (10) "Connection" means a line that provides water or sewer service to a single building or main building with accessory buildings. The term is synonymous with "service connection" as defined in ARM [17.38.101](#). For purposes of ARM [17.36.123](#), "connection" means a water or sewer line that connects a subdivision to a public system.
- (11) "Department" means the Montana Department of Environmental Quality.
- (12) "Deviation" means a department-approved departure from a requirement contained in a department circular.
- (13) "Drainage way" means a course or channel along which storm water moves in draining an area.
- (14) "Dry well" means a storm water detention structure that collects surface runoff and discharges the water below the natural ground surface.
- (15) "Escarpment" means any slope greater than 50% that extends vertically six feet or more as measured from toe to top.
- (16) "Existing system" means a water supply or wastewater disposal system that was installed prior to the submittal of a subdivision application under this subchapter.
- (17) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4 or DEQ-2.
- (18) "Facilities" means public or private facilities for the supply of water or disposal of sewage, storm water, or solid waste and any pipes, conduits, or other stationary method by which water, storm water, sewage, or solid wastes might be transported or distributed.
- (19) "Fill" means artificially placed soil.
- (20) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the floodfringe, as defined in ARM [36.15.101](#).
- (21) "Gray water" means wastewater that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.
- (22) "Ground water monitoring" means measuring the depth from the natural ground surface to the seasonally high ground water performed in accordance with Department Circular DEQ-4.
- (23) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not as part of its normal operation dispose of or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM [17.36.319](#) and Department Circular DEQ-4.
- (24) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.
- (25) "Individual water system" means any water system that serves one living unit or commercial unit and that is not a public water supply system as defined in [75-6-102](#), MCA.
- (26) "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit and that is not a public sewage system as defined in [75-6-102](#), MCA.
- (27) "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.
- (28) "Living unit" means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.
- (29) "Local health officer" means health officer as defined in [50-1-101](#), MCA, or the health officer's designee.
- (30) "Lot" is synonymous with "tract" or "parcel" for purposes of this chapter.
- (31) "Main" is defined in ARM [17.38.101](#).
- (32) "Mixing zone" is defined in [75-5-103](#), MCA.
- (33) "Mobile home" means a trailer equipped with necessary service connections that is designed for use as a long-term residence.
- (34) "Multiple-user wastewater system" means a wastewater system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in [75-6-102](#), MCA. 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.
- (35) "Multiple-user water supply system" means a water supply system that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in [75-6-102](#), MCA. 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.
- (36) "Municipal" means pertaining to an incorporated city or town.
- (37) "Natural soil" means soil that has developed through natural processes and to which no fill material has been added.

(38) "Parcel" means a part of land which is created by a division of land. The term is synonymous with "tract" and "lot" for purposes of this chapter.

(39) "Permanent space" means a space, regardless of occupancy, for recreational camping vehicles or mobile homes, with facilities for the supply of water or disposal of sewage provided by individual hookups, a service building, or centralized dump stations for sewage or fill stations for water.

(40) "Plat" is defined in [76-3-103](#), MCA.

(41) "Preliminary plat" is defined in [76-3-103](#), MCA.

(42) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

(43) "Public wastewater system" means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year. 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, so that ten or more proposed residential connections will be considered a public system.

(44) "Public water supply system" 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. 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, so that ten or more proposed residential connections will be considered a public system.

(45) "Recreational camping vehicle" means a vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(46) "Registered sanitarian" means a person licensed to practice the profession of sanitarian in Montana pursuant to Title 37, chapter 40, MCA.

(47) "Reviewing authority" is defined in [76-4-102](#), MCA.

(48) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(49) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(50) "Sewage" is synonymous with "wastewater" for purposes of this chapter.

(51) "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public sewage system as defined in [75-6-102](#), MCA.

(52) "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial units or a combination of both and that is not a public water supply system as defined in [75-6-102](#), MCA.

(53) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(54) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(55) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method, which can be found in Appendix B, Department Circular DEQ-4.

(56) "Spring" means natural opening in the earth's surface from which water issues or seeps.

(57) "State waters" is defined in [75-5-103](#), MCA.

(58) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(59) "Surface water" means any water on the earth's surface including, but not limited to, streams, lakes, ponds, reservoirs, and irrigation ditches, whether fresh or saline.

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

(61) "Unstable land forms" means areas showing evidence of mass down-slope movement such as hummock hill slopes, debris flows, landslides, and rock falls. Unstable land forms may be evidenced by slip surfaces roughly parallel to the hillside; landslide scars and carving debris ridges; fences, trees, or telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground.

(62) "Waiver" means a department-approved departure from a requirement contained in department rules. Granting of waivers must be in accordance with ARM [17.36.601](#).

(63) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(64) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circulars DEQ-2 and DEQ-4.

(65) "Well" is synonymous with the term "water well" defined in [75-5-103](#)(41), MCA.

(66) "Well isolation zone" means the area within a 100-foot radius of a water well.

(67) "Zone of saturation" means the area beneath the ground in which all open spaces are filled with ground water.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1984 MAR p. 1568, Eff. 10/26/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2000 MAR p. 967, Eff. 4/14/00; [AMD](#), 2000 MAR p. 3371, Eff. 12/8/00;

### **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 the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://www.deq.mt.gov>, or 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](#).

(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 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](#).

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; **AMD**, Eff. 11/4/73; **AMD**, Eff. 11/3/75; **AMD**, Eff. 5/6/76; **AMD**, 1977 MAR p. 746, Eff. 10/25/77; **AMD**, 1981 MAR p. 254, Eff. 3/27/81; **AMD**, 1992 MAR p. 2145, Eff. 9/25/92; **TRANS**, from DHES, 1996 MAR p. 1499; **AMD**, 2000 MAR p. 967, Eff. 4/14/00; **AMD**, 2002 MAR p. 1465, Eff. 5/17/02; **AMD**, 2009 MAR p. 1786, Eff. 10/16/09; **AMD**, 2014 MAR p. 2772, Eff. 9/19/14; **AMD**, 2023 MAR p. 324, Eff. 4/15/23.

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### **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 an application:

(a) a fee calculation sheet, as provided by the department, and payment of review fees as required in subchapter 8;

(b) for multiple-user and public systems, one copy of a design report and one copy of plans and specifications for water supply, wastewater treatment, and storm water systems. For individual and shared systems, see the specific requirements in Circulars DEQ-4 and DEQ-20. Prior to final approval, the reviewing authority will require three copies of final plans and specifications for multiple-user and public systems;

(c) lot layout documents as required by ARM [17.36.104](#);

(d) vicinity maps or plans showing the locations of the following features:

(i) lakes, streams, irrigation ditches, wetlands, and springs; and

(ii) a large-scale vicinity map showing existing, previously approved, and proposed wells, wastewater treatment systems, drainfields, existing and approved mixing zones and other sources of contamination within 100 feet of the proposed subdivision, or approved public water and public wastewater mains within 500 feet of the boundaries of the subdivision; and lagoons within 1,000 feet of any existing or proposed drinking well;

(e) evidence that the water source for the application is sufficient in terms of quality, quantity, and dependability, in accordance with ARM [17.36.117](#);

(f) evidence to show whether the wastewater treatment systems, including gray water systems, are sufficient in terms of capacity and dependability in accordance with ARM Title 17, chapter 36, subchapter 3;

(g) a copy of the nondegradation analysis and calculations as required by ARM [17.30.715](#). If the proposed wastewater disposal facilities for a subdivision are subject to the discharge permit requirements of Title 75, chapter 5, MCA, and ARM Title 17, chapter 30, the applicant shall first obtain the discharge permit and provide the reviewing authority with a copy of the discharge permit nondegradation determination;

(h) evidence that storm water facilities will be of sufficient size and located to ensure proper drainage and treatment in accordance with ARM [17.36.310](#);

(i) the name of the solid waste disposal site that will serve the subdivision and information as required in ARM [17.36.120](#);

(j) a copy of any environmental assessment prepared for the subdivision;

(k) a copy of the plat, certificate of survey, deed, or other document that is consistent with the document that will be, or has been, filed with the county clerk and recorder for the subdivision;

(l) if planning and platting approval is required under Title 76, chapter 3, MCA, the applicant must provide:

(i) a copy of the preliminary plat approval and findings of fact; and

(ii) any public comments or summaries of public comments collected as provided in [76-3-604\(7\)](#), MCA;

(m) a copy of applicable supporting legal documents;

(n) except for connections to existing public systems addressed under ARM [17.36.123](#) or projects within reservation boundaries, if the proposed water supply is from wells or springs, or is relocating an existing multiple-user water supply, a letter from the Department of Natural Resources and Conservation stating that the water supply:

(i) is, or is not, located in a controlled groundwater area; and

(ii) is either exempt from water rights permitting requirements or has a water right, as defined in [85-2-102](#), MCA;

(o) for projects within reservation boundaries, water rights predetermination information or the equivalent authorization may be provided by the appropriate water management board;

(p) a copy of any applicable existing certificate of subdivision approval and the approved lot layout document;

(q) a letter from the Montana Sage Grouse Habitat Conservation Program or evidence that the subdivision is located outside designated sage grouse habitat as required under Executive Order 12-2015;

(r) the information required in ARM [17.30.1702](#) regarding setbacks between sewage lagoons and wells; and

(s) all additional information that is required under this chapter or that the reviewing authority determines is reasonably necessary for the review of the proposed subdivision.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from [DHES](#), 1996 MAR p. 1499; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2011 MAR p. 2278, Eff. 10/28/11; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2019 MAR p. 836, Eff. 6/22/19; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.104](#) APPLICATION--LOT LAYOUT DOCUMENT

(1) The applicant shall provide lot layout documents for the subdivision application. At least one copy of the lot layout must be submitted with the subdivision application. Prior to final approval, four copies of the final lot layout must be submitted. The lot layout documents must be on sheets no larger than 11" x 17", at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

(2) The following information must be provided on the lot layout documents. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout documents only if the documents remain legible:

(a) the name of the subdivision, and the county, section, township and range (e.g., "Sec. 12 T27N R6E") in which the subdivision is located;

(b) a north arrow and scale;

(c) the boundaries, dimensions, and total area of each lot;

(d) an identifier or number for each lot (e.g., "Lot 1, Lot 2," "Tract 1, Tract 2," or "Parcel 1, Parcel 2");

(e) locations of existing and proposed easements;

(f) locations of existing and proposed roads and utilities;

(g) locations of drainageways;

(h) name and affiliation of the person who prepared the lot layout;

(i) information as set out in Table 1 for the specific water supply, wastewater, and storm water facilities in the subdivision, and those located within 100 feet of the perimeter of the subdivision or parcel. All systems must be labeled as "existing" or "proposed." For

individual and shared systems, the locations and design details do not have to be shown on the lot layout if those details will not be determined until the time of septic permitting.

TABLE 1  
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water or municipal sewer systems
Existing wells and proposed well locations or approved drilling areas, setbacks in ARM <a href="#">17.36.323</a> Table 2, and features listed in ARM <a href="#">17.36.103</a> (1) (d) within 100 feet of the subdivision	X	X	X
Water lines (suction and pressure)			X
Water lines (extension and connections)	X	X	X
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X	
Existing and proposed gray water irrigation systems	X	X	X
Percent and direction of slope across the drainfield	X	X	
Sewer lines (extensions and connections)	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X	
Percolation test locations, if provided, keyed to result form		X	

Soil pit locations keyed to soil profile descriptions		X	
Ground water monitoring wells keyed to monitoring results form	X	X	X
Floodplain boundaries	X	X	X
Cisterns	X	X	X
Existing and proposed building locations	X	X	X
Driveways	X	X	X
Road cuts and escarpments or slopes > 25%		X	
Mixing zone boundaries and direction of ground water flow	X	X	
Locations, sizes, and design details of proposed storm water facilities	X	X	X
Locations and sizes of existing storm water facilities	X	X	X

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.105](#) SUBDIVISION AND PLATTING ACT EXCLUSIONS SUBJECT TO DEPARTMENT REVIEW

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP, 76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### [17.36.106](#) REVIEW PROCEDURES--LOTS FILED WITH SANITARY RESTRICTIONS BEFORE 1973

(1) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary restrictions in no case shall be lifted from any such lot which cannot satisfy any of the following requirements:

(a) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent;

(b) the proposed water supply must comply with the requirements of this chapter; and

(c) unless a waiver is granted pursuant to ARM [17.36.601](#) after consultation with the local health department:

- (i) if a subsurface wastewater treatment system is utilized, there must be at least four feet from the natural ground surface to a limiting layer;
- (ii) the site for any subsurface wastewater treatment system may not exceed 25 percent in slope; and
- (iii) no part of the lot utilized for the subsurface wastewater treatment system components addressed in Department Circular DEQ-4, Chapter 6 may be located in a 100-year floodplain.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-114, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14; AMD, 2016 MAR p. 722, Eff. 4/23/16; AMD, 2018 MAR p. 1588, Eff. 8/11/18; AMD, 2023 MAR p. 324, Eff. 4/15/23.

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#### **17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS**

(1) The applicant shall provide the department with evidence as to whether non-public facilities for the supply of water and disposal of wastewater are in compliance with applicable laws and regulations of local government. The evidence must be in one of the following forms:

- (a) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification of compliance that is signed by the local health officer having jurisdiction. The applicant shall submit the certification to the department prior to the department issuing a certificate of subdivision approval; or
- (b) for an application that is subject to review by a local reviewing authority under 76-4-104, MCA, a signed certificate of subdivision approval.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1981 MAR p. 254, Eff. 3/27/81; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2023 MAR p. 324, Eff. 4/15/23.

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#### **17.36.110 CERTIFICATE OF APPROVAL**

(1) Subject to the local certification requirements set out in (2), the reviewing authority shall issue a certificate of subdivision approval if:

- (a) an applicant has submitted all of the information required by this chapter;
- (b) the requirements of this chapter and of the Montana Environmental Policy Act have been met; and
- (c) the reviewing authority determines that:
  - (i) wastewater will not pollute or degrade state waters or endanger public health;
  - (ii) all wastewater disposal facilities are sufficient in terms of capacity and dependability;
  - (iii) the water supply will be sufficient in terms of quality, quantity, and dependability;
  - (iv) solid waste disposal will be in accordance with applicable state laws and rules; and
  - (v) storm drainage will have proper drainageways and the drainage will not pollute state waters.

(2) The reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108(1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2000 MAR p. 967, Eff. 4/14/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2011 MAR p. 2278, Eff. 10/28/11; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

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#### **17.36.111 MOBILE HOMES AND RECREATIONAL CAMPING VEHICLES**

This rule has been repealed.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.

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

(1) A facility previously approved under Title 76, chapter 4, MCA, that is submitted for review under this chapter is not subject to review if the facility:

- (a) is not proposed to be changed;
- (b) is not affected by a proposed change to another facility; and
- (c) meets the conditions of its existing approval and is operating properly.

(i) To determine whether previously approved water, sewer, and storm water facilities are operating properly, the reviewing authority may require submittal of well logs, water sampling results, any septic permit issued, and evidence that the septic tank has been pumped in the previous three years unless the system is less than five years old.

(2) The owner of a parcel that deviates from the conditions of approval shall obtain approval from the reviewing authority as provided in (3) through (6).

(3) Applications for amendments (rewrites) of certificates of subdivision approval must be submitted in accordance with ARM [17.36.102](#). The facilities are subject to the rules and standards in effect at the time the application is submitted, except that, if a requirement in the applicable rules and standards would preclude a previously approved use of the parcel, the department may consider a deviation or waive the requirement that would preclude the use. Waivers and deviations are subject to ARM [17.36.601](#). Applications for rewrites must also describe any changes to previously approved facilities. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(4) Amendments that consist solely of the relocation or modification of previously approved facilities may be made through approval of a revised lot layout document in accordance with (a) through (c).

(a) A revised lot layout document may be issued for lots with previously approved facilities if:

(i) the changes consist solely of the relocation or modification of previously approved facilities shown on the lot layout that do not affect the conditions of approval in a COSA statement;

(ii) there are no changes in lot boundaries; and

(iii) the changes comply with applicable rules. Changes in previously approved facilities are subject to the rules and standards in effect at the time the application is submitted, except that, if a requirement in the applicable rules and standards would preclude a previously approved use of the parcel, the department may consider a deviation or waive the requirement that would preclude the use. Revised lot layouts must show any changes to previously approved facilities. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(b) An applicant seeking approval of a revised lot layout must submit all of the following to the reviewing authority:

(i) a completed joint application, including the applicable review fee;

(ii) a copy of the revised lot layout document that complies with ARM [17.36.104](#); and

(iii) all other information that the reviewing authority deems necessary to demonstrate compliance with applicable rules.

(c) The approved revised lot layout must be filed with the county clerk and recorder and a copy must be provided to the department.

(5) At the time of septic permitting, local health departments that have been certified as the reviewing authority under ARM [17.36.116](#) may approve minor deviations from a certificate of subdivision approval without triggering an additional review under this chapter.

(a) The proposed minor deviations must meet the requirements of the most current version of DEQ-4 and this rule.

(b) Minor deviations are limited to:

(i) replacing distribution piping with gravelless trenches or vice versa;

(ii) replacing a standard trench system with a pressure-dosed system;

(iii) replacing a previously approved system with an equivalent system;

(iv) replacing components in a previously approved system with equivalent components;

(v) replacing the wastewater treatment system with a system that provides greater treatment than the approved system;

(vi) installing any Level 2 system in place of any other Level 2 system that provides equivalent treatment; and

(vii) approving changes to sizes of approved wastewater treatment systems, unless there are site constraints that would cause a violation of this chapter.

(6) Amendments to an existing certificate of subdivision approval that consist solely of replacing approved facilities for the supply of drinking water or disposal of wastewater with connection to a

municipal or county public water system or public wastewater system must be submitted using a notification of change form provided by the department or by submitting an application under ARM [17.36.112](#)(3).

History: [76-4-104](#), MCA; [IMP, 76-4-125](#), MCA; [NEW](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.116](#) CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH AS THE REVIEWING AUTHORITY

(1) A local department or board of health, if it requests certification, must be certified as the reviewing authority within the scope of [76-4-104](#)(3), MCA, if the following requirements are met and the sanitarian or engineer is qualified as described in (3):

(a) the local department or board of health employs a registered sanitarian or a professional engineer responsible to perform the actual review. Those local governments employing more than one registered sanitarian or professional engineer shall designate one such person to be responsible for the review program;

(2) The local department or board of health is required, pursuant to a written contract, to review subdivision applications according to the requirements of Title 76, chapter 4, MCA, and this chapter.

(3) A registered sanitarian or registered professional engineer must complete the following before becoming certified to perform subdivision reviews:

(a) pass, with a score of at least 90 percent, a written examination administered by the department that demonstrates knowledge of:

- (i) Title 76, chapter 4, MCA;
- (ii) this chapter;
- (iii) applicable department circulars;
- (iv) Title 75, chapter 5, MCA;
- (v) ARM Title 17, chapter 30, subchapters 5 and 7; and
- (vi) other applicable laws and regulations;

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a certified registered sanitarian or professional engineer; and

(c) for individuals previously certified under this subsection, complete at least one subdivision review in the preceding two years. Previously certified individuals who have not completed at least one subdivision review in the preceding two years shall, prior to performing subdivision review, satisfy the requirements in (3)(a).

(4) The department's oversight of a certified local reviewing authority's review of subdivision applications shall be limited to the following:

(a) within the statutory review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted an element review and a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that any part of these tasks was not completed, the department may return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the statutory review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to ten percent of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

- (i) upon the request of the local reviewing authority; or
- (ii) when the department has reason to question the local reviewing authority's determination for a particular application;

(c) if the department identifies possible errors or discrepancies in the local reviewer's determination regarding an application, the department shall consult with the local reviewer. If, after consultation, the department does not agree with the local reviewer's determination regarding an application's compliance with applicable state laws, rules, and circulars, the department may, prior to the expiration of the review period for the application, modify the local determination regarding the state requirements;

(d) the department may conduct an annual audit of a representative sample of locally reviewed applications.

(5) The department retains the right to suspend or revoke the certification of the local department or board of health if the department determines that the local reviewing authority is not complying with the sanitation in subdivisions act or other applicable statutes or rules.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-105](#), MCA; [NEW](#), 1986 MAR p. 1509, Eff. 9/12/86; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2011 MAR p. 2278, Eff. 10/28/11; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.117](#) WATER SYSTEMS

(1) Plans for proposed subdivision facilities that include public water supply systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1.

(2) Non-Public Water Systems must comply with Circular DEQ-20.

(3) Systems requiring design by a professional engineer per DEQ-20 or ARM [17.38.101](#) are subject to the requirements of ARM [17.36.121](#).

History: [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.120](#) SOLID WASTES

(1) Solid wastes stored within the subdivision must be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes must be disposed of at a department-licensed site in accordance with ARM [17.50.508](#) or an appropriate out-of-state waste disposal site.

History: [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [TRANS](#), from [17.36.309](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [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 in the application indicating commitment to retain a professional engineer to 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 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 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.

History: [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [TRANS](#) and [AMD](#), from [17.36.314](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.122](#) OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

(1) Public systems must be owned by an individual or entity that meets the requirements of [75-6-126](#), MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

(2) 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) When required by department circulars or this chapter, an operation and maintenance manual must be provided for water supply, wastewater treatment, and storm water facilities meeting the requirements of that circular or rule.

(4) 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 (6). Easements must be 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 that adequately describes what is being conveyed, contains language of conveyance, and identifies the grantor and grantee of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

(5) If an application includes a shared or multiple-user system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

(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) For lots created after March 30, 2011, a proposed drainfield mixing zone must be located wholly within the boundaries of the lot unless:

- (i) the adjoining land is owned by the same person;
- (ii) an easement has been obtained for the mixing zone from the affected landowner;
- (iii) for public land, appropriate authorization has been obtained from the public entity; or
- (iv) the mixing zone extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

(b) For lots created after October 1, 2013, a proposed well isolation zone must be located wholly within the boundaries of the lot unless:

- (i) the adjoining land is owned by the same person;
- (ii) an easement has been obtained for the well isolation zone from the affected landowner;
- (iii) for public land, appropriate authorization has been obtained from the public entity; or
- (iv) for individual wells only, the well is located a minimum of 50 feet inside the lot boundary and extends onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities.

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

- (i) divisions provided for in [76-3-207](#), MCA, except for family transfers under [76-3-207\(1\)\(b\)](#), MCA;
- (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.

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), MCA; **NEW**, 2000 MAR p. 3371, Eff. 12/8/00; **AMD**, 2003 MAR p. 221, Eff. 2/14/03; **AMD**, 2016 MAR p. 722, Eff. 4/23/16; **AMD**, 2018 MAR p. 1588, Eff. 8/11/18; **TRANS** and **AMD**, from [17.36.326](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.123](#) CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS

(1) New water supply and sewage disposal facilities in a proposed subdivision must be provided by a connection to a public water supply or public wastewater system if any boundary of the subdivision is within 500 feet of any component of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM [17.36.601](#), of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements cannot be obtained. For purposes of this rule, a connection is economically practical if the cost of constructing the connection to the system is less than or equal to three times the cost of constructing approvable systems on the site.

(2) Unless a waiver is granted pursuant to ARM [17.36.601](#), the reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

(a) the existing public system is approved by the department and is in compliance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38;

(b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:

(i) the system has an adequate capacity to meet the needs of the subdivision;

(ii) the connections are authorized;

(iii) the system is in compliance with ARM Title 17, chapter 38, and all other applicable department regulations; and

(iv) the appropriate water rights exist for this connection; and

(c) the applicant submits to the reviewing authority the name and public water supply ID (PWSID) number of the public system.

(3) If the proposed additional connections will create a new public system, the applicant shall submit plans and specifications for the entire system (existing and proposed) for review and approval by the department in accordance with the provisions of Title 75, chapter 6, part 1, MCA, and ARM Title 17, chapters 30 and 38.

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), MCA; **NEW**, 2002 MAR p. 1465, Eff. 5/17/02; **AMD**, 2014 MAR p. 2098, Eff. 9/19/14; **TRANS** and **AMD**, from [17.36.328](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [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 compliance with the Water Quality Act, Title 75, chapter 5, MCA, and water quality and non-degradation standards, ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12.

**History:** 76-4-104, MCA; IMP, 76-4-104, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2014 MAR p. 2098, Eff. 9/19/14; TRANS, from 17.36.312, 2023 MAR p. 324, Eff. 4/15/23.

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#### 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.

(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 water or sewage disposal system in an existing building to be converted into condominiums has already been approved under either department requirements or 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.

**History:** 76-4-104, MCA; IMP, 76-4-111, 76-4-125, MCA; NEW, 1984 MAR p. 1027, Eff. 7/13/84; TRANS, from DHES, 1996 MAR p. 1499; TRANS, from 17.36.313, 2023 MAR p. 324, Eff. 4/15/23.

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#### 17.36.126 ADOPTION BY REFERENCE

(1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) Department Circular DEQ-1, "Standards for Water Works," 2022 edition;
- (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2018 edition;
- (c) Department Circular DEQ-3, "Standards for Small Water Systems," 2023 edition;
- (d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2023 edition;
- (e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);
- (f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," 2017 edition;
- (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;
- (h) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;
- (i) Department Circular DEQ-20, "Standards for Non-Public Water Systems," 2023 edition;
- (j) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water Evaluation," 2022 edition;
- (k) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition;
- (l) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils; and
- (m) ARM 17.30.1702 regarding setbacks between sewage lagoons and wells.

(2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2006 MAR p. 540, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13; AMD, 2014 MAR p. 1802, Eff. 8/8/14; AMD, 2016 MAR p. 1008, Eff. 6/4/16; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2018 MAR p. 1588, Eff. 8/11/18; AMD, 2019 MAR p. 826, Eff. 6/22/19; AMD, 2022 MAR p. 1695, Eff. 8/27/22; TRANS and AMD, from 17.36.345, 2023 MAR p. 324, Eff. 4/15/23.

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#### 17.36.301 LOT SIZES

This rule has been repealed.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.

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#### 17.36.302 PUBLIC WATER AND SEWER

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### [17.36.303](#) INDIVIDUAL WATER SUPPLY SYSTEMS

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1984 MAR p. 1568, Eff. 10/26/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 1997 MAR p. 1458, Eff. 8/19/97; [REP](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### [17.36.304](#) INDIVIDUAL SEWAGE TREATMENT SYSTEMS

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1984 MAR p. 1568, Eff. 10/26/84; [AMD](#), 1984 MAR p. 1801, Eff. 12/14/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2000 MAR p. 3371, Eff. 12/8/00.

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#### [17.36.305](#) MULTIPLE USER WATER SUPPLY SYSTEMS

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1984 MAR p. 1568, Eff. 10/26/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2000 MAR p. 3371, Eff. 12/8/00; [REP](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### [17.36.309](#) SOLID WASTES

This rule has been transferred.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [TRANS](#), to [17.36.120](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.310](#) STORM DRAINAGE

- (1) The applicant shall submit a storm drainage plan in accordance with department Circular DEQ-8 to the reviewing authority.
- (2) Storm drainage plans must be prepared by a professional engineer and must comply with the requirements in ARM [17.36.314](#) if the subdivision application proposes either of the following:
  - (a) six or more lots; or
  - (b) a lot proposed for use other than a single living unit with greater than 25 percent impervious area.
- (3) A storm drainage plan must include a maintenance plan for all drainage structures. The maintenance plan must describe the drainage structures, provide a maintenance schedule, and designate the entity responsible for performing maintenance. The reviewing authority may require the applicant to create a homeowner's association or other legal entity that will be responsible for maintenance of storm drainage structures and that will have authority to charge appropriate fees. The maintenance plan must include easements and agreements as necessary for operation and maintenance of all proposed storm drainage structures or facilities.
- (4) The applicant shall obtain an easement if the reviewing authority determines the easement is needed to allow adequate operation and maintenance of the facilities. The easement must be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. The easement 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.
- (5) The reviewing authority may exempt the requirements of (1), (2), and (3) for subdivisions located entirely within a first-class or second-class municipality, as described in [7-1-4111](#), MCA, or within a Municipal Separate Storm Sewer System (MS4) general permit area, as defined in ARM [17.30.1102](#), if:
  - (a) the applicant submits to the reviewing authority a letter of consent from the municipal or MS4 entity on a form provided by the department; and
  - (b) the municipal or MS4 entity either accepts the stormwater into a municipal storm water system or requires the applicant to comply with municipal or MS4 storm water drainage design standards.
- (6) If material will be displaced or added within a delineated floodplain, the applicant shall provide evidence that the floodplain permit coordinator has been notified and that appropriate approvals have been obtained.

- (7) If applicable, the applicant shall obtain an MPDES permit for storm water discharges, pursuant to ARM Title 17, chapter 30.
- (8) Storm water that reaches state surface waters must be treated prior to discharge if the reviewing authority determines that untreated storm water is likely to degrade the receiving waters.
- (a) minimum treatment of storm water consists of removal of settleable solids and floatable material. The reviewing authority may require more extensive treatment if deemed necessary to protect state waters from degradation;
- (b) plans for the treatment facility must be approved by the reviewing authority.
- (9) The department may grant a waiver from any of the requirements in this rule pursuant to the provisions of ARM [17.36.601](#).

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; **AMD**, Eff. 11/4/73; **AMD**, Eff. 11/3/75; **AMD**, Eff. 5/6/76; **AMD**, 1977 MAR p. 746, Eff. 10/25/77; **AMD**, 1984 MAR p. 1027, Eff. 7/13/84; **TRANS**, from DHES, 1996 MAR p. 1499; **AMD**, 2002 MAR p. 1465, Eff. 5/17/02; **AMD**, 2003 MAR p. 221, Eff. 2/14/03; **AMD**, 2014 MAR p. 2098, Eff. 9/19/14; **AMD**, 2018 MAR p. 1588, Eff. 8/11/18.

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#### [17.36.310](#) STORM DRAINAGE

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), [76-4-125](#), MCA; Eff. 12/31/72; **AMD**, Eff. 11/4/73; **AMD**, Eff. 11/3/75; **AMD**, Eff. 5/6/76; **AMD**, 1977 MAR p. 746, Eff. 10/25/77; **AMD**, 1984 MAR p. 1027, Eff. 7/13/84; **TRANS**, from DHES, 1996 MAR p. 1499; **AMD**, 2002 MAR p. 1465, Eff. 5/17/02; **AMD**, 2003 MAR p. 221, Eff. 2/14/03; **AMD**, 2014 MAR p. 2098, Eff. 9/19/14; **AMD**, 2018 MAR p. 1588, Eff. 8/11/18; **AMD**, 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.312](#) SUBDIVISIONS ADJACENT TO STATE WATERS

This rule has been transferred.

**History:** [76-4-104](#), MCA; **IMP**, [76-4-104](#), [76-4-125](#), MCA; **NEW**, 1984 MAR p. 1027, Eff. 7/13/84; **AMD**, 1992 MAR p. 2145, Eff. 9/25/92; **TRANS**, from DHES, 1996 MAR p. 1499; **AMD**, 2014 MAR p. 2098, Eff. 9/19/14; **TRANS**, to [17.36.124](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.313](#) CONDOMINIUM CONVERSIONS

This rule has been transferred.

**History:** [76-4-104](#), MCA; **IMP**, [76-4-111](#), [76-4-125](#), MCA; **NEW**, 1984 MAR p. 1027, Eff. 7/13/84; **TRANS**, from DHES, 1996 MAR p. 1499; **TRANS**, to [17.36.125](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.314](#) REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS

This rule has been transferred.

**History:** [76-4-104](#), MCA; **IMP**, [76-4-125](#), MCA; **NEW**, 2014 MAR p. 2098, Eff. 9/19/14; **AMD**, 2018 MAR p. 1588, Eff. 8/11/18; **TRANS** and **AMD**, to [17.36.121](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.319](#) GRAY WATER REUSE

- (1) This rule applies to gray water reuse on subdivision parcels that are subject to review, or that have been approved, under Title 76, chapter 4, MCA.
- (2) Except as provided in (3) and (4), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this chapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without review, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this chapter and applicable department circulars.
- (3) Gray water may be used for irrigation as provided in (4). If a gray water irrigation system meets all of the requirements in (4), the system is not subject to the requirements of subchapter 3.
- (4) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:
- (a) prior to installation, a gray water irrigation system must have a permit from the local health department;
- (b) gray water irrigation must be subsurface, with a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;
- (c) as provided in [75-5-326](#), MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located within a floodplain, as defined in [76-5-103](#), MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;
- (d) there must be a minimum of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM [17.36.101](#);

(e) unless a waiver is granted by the department, the following horizontal setback distances must be maintained. Gray water irrigation may not occur within:

- (i) 100 feet of wells;
- (ii) 100 feet of surface water;
- (iii) 100 feet of a floodplain; or
- (iv) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) gray water irrigation systems in subdivisions may not be installed unless approved under Title 76, chapter 4, MCA. If a system complies with (4)(a) through (e), review under Title 76, chapter 4, MCA, is not required if the system serves:

(i) a parcel that has a previous certificate of subdivision approval issued pursuant to Title 76, chapter 4, MCA, if no other changes to the certificate are proposed, except that review under Title 75, chapter 6, MCA, is required before a public wastewater system is modified to include a gray water irrigation system; or

(ii) a parcel that, when created, was exempt from review under Title 76, chapter 4, MCA, because it was served solely by municipal facilities, as defined in [76-4-102](#), MCA.

(5) Subdivision applications must contain descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with Appendix B of Department Circular DEQ-4. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.

(6) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.

(7) The department may require user agreements for systems that serve more than one user. The department may require easements for systems that cross property lines.

(8) If an existing gray water irrigation system is present in a proposed subdivision, the department shall review the adequacy of the system for the proposed use and the capability of the system to operate without risk to public health and without pollution of state waters. Existing systems must comply with state and local laws and regulations, including permit requirements, applicable at the time of installation.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2009 MAR p. 1786, Eff. 10/16/09.

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#### [17.36.320](#) SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION

(1) All components of sewage treatment systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM [17.36.601](#).

(2) Multiple-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a professional engineer and are subject to the requirements in ARM [17.36.314](#).

(3) For subsurface systems, a minimum separation of at least four feet of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a slope of greater than 15 percent.

(4) The proposed subsurface sewage treatment area must include an area for 100 percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM [17.36.601](#), the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

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#### [17.36.320](#) SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.321](#) SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS

(1) All systems must be designed and installed in accordance with Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. Requirements applicable to review of existing sewage treatment systems are set out in ARM [17.36.327](#).

(2) Systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems, but may be used as replacement systems subject to the limitations provided in Department Circular DEQ-4:

- (a) cut systems;

- (b) fill systems;
- (c) artificially drained systems;
- (d) absorption beds;
- (e) pit privies;
- (f) seepage pits; and
- (g) holding tanks, except that:
  - (i) the department may grant a waiver, pursuant to ARM [17.36.601](#), to allow holding tanks in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health department. Holding tanks must be designed and maintained in accordance with the requirements in Department Circular DEQ-4 and all other requirements imposed by the department and local health department; and
  - (ii) the department may grant a waiver, pursuant to ARM [17.36.601](#) and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.
- (4) Cesspools are prohibited as new or replacement systems.
- (5) Sealed pit privies may be used only in facilities owned and operated by a local, state, or federal unit of government, or in facilities where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

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#### [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 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.
- (3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM [17.36.101](#).
- (4) No component of any sewage treatment system may be located under structures or driveways, parking areas or 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 be located wholly within the proposed subdivision where the drainfield is to be located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed mixing zone outside the boundaries of the proposed subdivision. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way for roads, railroads, or utilities. This section does not apply to the divisions provided for in [76-3-207](#), MCA, except those under [76-3-207](#)(1)(b), MCA.
- (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.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2011 MAR p. 2278, Eff. 10/28/11; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

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#### [17.36.322](#) SEWAGE SYSTEMS: SITING

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2011 MAR p. 2278, Eff. 10/28/11; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.323](#) SETBACKS

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [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 (4) (11)	- Sealed components - no setbacks (1) Other components - 100 (2) (4) (11)	100 (11) (14)
Mixing zones	100 (4)	-	-
Storm water ponds and ditches (15)	25 (4) (16)	10 (4)	25 (4)

(1) Sealed components include holding tanks, sealed pit privies, raw wastewater pumping stations, dose tanks, and septic tanks. Sealed components must meet the requirements of ARM [17.36.322](#)(4).

(2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8, subject to the limitations in ARM [17.36.321](#).

(4) A waiver of this requirement may be granted by the department pursuant to ARM [17.36.601](#).

(5) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(6) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(7) Down-gradient of the sealed component, other component, or drainfield/soil absorption system.

(8) Easements may be used to satisfy the setback to property boundaries.

(9) Unless a waiver is granted by the department pursuant to ARM [17.36.601](#), sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(10) For purposes of this rule, "surface water" does not include intermittent storm water.

(11) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(12) Pursuant to ARM [17.36.331](#), the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

(13) A waiver may be granted by the department, pursuant to ARM [17.36.601](#), if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(14) After consultation with the local health department, a waiver may be granted by the department, pursuant to ARM [17.36.601](#), if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(15) Storm water ponds and ditches are those structures that temporarily hold or convey water as part of storm water management.

(16) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16.

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#### [17.36.324](#) SEWAGE SYSTEMS: FLOODPLAINS

- (1) The applicant shall identify the location of any floodplain on the lot layout document. The department may require the applicant to provide additional information, such as elevations at specific locations.
- (2) The applicant shall submit evidence adequate to allow the department to establish the location of the floodplain if:
  - (a) the federal or state government has not designated the floodplain, or if the location of the floodplain is in question with respect to a proposed subdivision; and
  - (b) the stream is shown as an intermittent or perennial stream on the most current USGS 7 1/2 minute (1:24,000) topographic map (unless the applicant provides adequate information that the stream is not subject to flooding) .

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00.

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#### [17.36.325](#) SEWAGE SYSTEMS: SITE EVALUATION

- (1) The reviewing authority may require that percolation tests, conducted in accordance with department Circular DEQ-4, be performed within the boundary of each proposed subsurface sewage treatment system. Percolation tests must be keyed by a number on the lot layout to the results in the report form.
- (2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ground water monitoring must be conducted in accordance with Department Circular DEQ-4.
- (3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. Soil descriptions for the proposed subdivision must meet the following requirements:
  - (a) Soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.
  - (b) Soil descriptions must be based on data obtained from test holes. Test holes must be dug in accordance with Department Circular DEQ-4. The number of test holes must be as provided in (c), unless a waiver is granted by the department pursuant to [ARM 17.36.601](#). Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.
  - (c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield. At least three test holes must be dug for each multiple-user and public drainfield. At least one test hole must be dug for each zone of a pressure-dosed drainfield.
  - (d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment system, the department may require additional test holes and soil descriptions sufficient to describe the suitability of the soil.
- (4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

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#### [17.36.326](#) OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

This rule has been transferred.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [TRANS](#) and [AMD](#), to [17.36.122](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.327](#) SEWAGE SYSTEMS: EXISTING SYSTEMS

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [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 sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(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) evidence demonstrating the proper hydraulic functioning of each existing system;
- (b) evidence as to whether each existing system complied with state and local laws and regulations, including permit requirements, applicable at the time of installation; and
- (c) evidence that each existing septic tank was pumped within three years prior to the department's review unless the existing septic tank is less than five years old.

(3) The setbacks requirements in ARM [17.36.323](#) apply, but may be waived for existing sewage systems pursuant to ARM [17.36.601](#).

(4) The applicant shall provide for a replacement area for each existing system. Unless a waiver is approved by the department pursuant to ARM [17.36.601](#), replacement areas must comply with the requirements of this subchapter.

(5) Existing cesspools and pit privies 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.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2000 MAR p. 3371, Eff. 12/8/00; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16.

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#### [17.36.328](#) CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS

This rule has been transferred.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [TRANS](#) and [AMD](#), to [17.36.123](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.330](#) WATER SUPPLY SYSTEMS--GENERAL

(1) The applicant shall demonstrate that water supply systems provide an adequate supply by showing that the following criteria are met:

(a) the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2 may not be exceeded;

(b) the following flows must be provided:

(i) for individual and shared water supply systems, the flow indicated in ARM [17.36.332](#);

(ii) for multiple-user water supply systems, the requirements set out in Department Circular DEQ-3; and

(iii) for public water supply systems, the requirements set out in Department Circulars DEQ-1 and DEQ-3;

(c) the necessary quantity and quality of water must be available at all times unless depleted by emergencies.

(2) If ground water is proposed as a water source, the applicant shall submit the following information:

(a) the location of the proposed ground water source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM [17.30.502](#). If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with Department Circular PWS-6; and

(b) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer.

(3) For lots two acres in size or less, the applicant shall physically identify the proposed well 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 well location.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(5) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Except as provided in [76-4-104](#)(6)(i), MCA, each proposed well isolation zone must be located wholly within the boundaries of the proposed subdivision where the well is located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision. This section does not apply to the divisions provided for in [76-3-207](#), MCA, except those under [76-3-207](#)(1)(b), MCA.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18.

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#### [17.36.330](#) WATER SUPPLY SYSTEMS--GENERAL

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.331](#) WATER SUPPLY SYSTEMS: WATER QUALITY

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.331](#) WATER SUPPLY SYSTEMS: WATER QUALITY

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) the applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2. The necessary quality of water must be available at all times unless depleted by emergencies.

(b) the applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of nitrates and nitrites and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in Department Circular DEQ-7, or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the Department of Public Health and Human Services for analyses of water samples for public water systems.

(i) the applicant shall provide the well log for every well from which a ground water sample is collected. If a well log is not available, the applicant shall provide information about the well depth and depth to static water level. The reviewing authority may require additional information to demonstrate that ground water quality is sufficient for the proposed subdivision;

(ii) the applicant shall accurately identify, on a topographic map or lot layout document, the location of every well from which a ground water sample is taken; and

(iii) the requirement to sample for nitrates and nitrites and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) the minimum setback distances set out in Table 2 of ARM [17.36.323](#) must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within 100 feet of a ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with Department Circular PWS-5.

(e) wells must have unperforated casing to a minimum depth of 25 feet below ground surface unless the reviewing authority finds that, based upon geological information provided by the applicant, a lesser depth will ensure that the other requirements of this rule are satisfied. The reviewing authority may require unperforated casing to a depth greater than 25 feet if water of better chemical or microbiological quality can be obtained from a deeper zone.

(f) a surface water or ground water source under the direct influence of surface water, as described in Department Circular PWS-5, may not be used as a water source for a non-public system.

(2) Public water supply systems are subject to the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14.

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#### [17.36.332](#) WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY

(1) The applicant shall demonstrate that ground water quantity is sufficient for the proposed subdivision. The necessary quantity of water must be available at all times unless depleted by emergencies. The applicant shall show that the following minimum flows are available:

(a) an individual water system must provide a sustained yield of at least ten gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage;

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or ten gallons per minute over a two-hour period;

(c) multiple-user water supply systems must meet the flow requirements in Department Circular DEQ-3; and

(d) public water supply systems must meet the flow requirements set out in Department Circulars DEQ-1 and DEQ-3.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following, as determined by the reviewing authority:

(a) test wells within the proposed subdivision;

- (b) well logs and testing of nearby wells;
- (c) hydrogeological reports; or
- (d) ground water modeling.

(3) For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability of the ground water sources. The tests must be conducted pursuant to Department Circular DEQ-3.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(5) When the proposed water supply is an unconfined aquifer and a significant recharge source is from irrigation ditches or irrigated fields, the reviewing authority may require the applicant to demonstrate that the source will produce a water supply that is sufficient in terms of water quality, quantity and dependability for the proposed subdivision if all irrigation-related recharge to the aquifer is eliminated.

(6) The department may allow, pursuant to a waiver under ARM [17.36.601](#), a lesser flow than those set out in (1)(a) and (b) if the applicant demonstrates that the water supply system provides a sufficient quantity of water to meet demands and that adequate storage is provided to meet peak demand.

(7) The reviewing authority may require the applicant to submit information in addition to that required in (1) through (5) to demonstrate the dependability of the ground water supply if the reviewing authority believes that dependability is questionable. At a minimum, the applicant shall provide evidence that the aquifer can supply, by itself or through recharge from surrounding geologic units, water to wells in an amount equal to the proposed ground water withdrawals.

(8) If water is to be supplied by means other than individual on-site wells, the reviewing authority shall also review the applicant's information, required under ARM [17.36.103](#)(1)(h), and water use agreements to determine the quantity and dependability of the water supply.

(9) If the proposed water supply is from wells or springs, the water right information in ARM [17.36.103](#)(1)(s) is required.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14.

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#### [17.36.332](#) WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.333](#) WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.333](#) WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION

(1) The applicant shall meet the following requirements relating to the design and construction of water supply systems:

(a) individual and shared wells must be constructed in accordance with ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(b) multiple-user water supply systems must be designed and constructed in accordance with Department Circular DEQ-3, and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) multiple-user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a professional engineer. If an existing system is expanded to serve six or more connections, the expansion must be designed by a professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a professional engineer. Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of ARM [17.36.314](#);

(ii) if more than one multiple user water system is proposed for a subdivision, the systems must be tied together to ensure greater system reliability. The department may grant a waiver, pursuant to ARM [17.36.601](#), of this provision if the applicant demonstrates that interconnection of the systems is physically or economically impractical or would create an environmental or public health concern;

(c) the reviewing authority may require additional well construction and/or testing requirements not required in ARM Title 36, chapter 21, subchapter 6 or in department Circular DEQ-3, to ensure that wells within a particular subdivision will provide an adequate water supply.

(2) Public water supply systems are required to meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

**History:** [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14.

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#### [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 system will be adequately operated and maintained.

(2) Public systems must be owned by an individual or entity that meets the requirements of [75-6-126](#), MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(4) 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 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) the easement must be in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, the easement must be shown on the plat or certificate of survey for the proposed subdivision.

(5) If an application includes a shared or multiple-user water supply system that serves more than one lot, the applicant shall submit to the reviewing authority a draft user agreement that identifies the rights and responsibilities of each user. User agreements must be in a form acceptable to the department.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18.

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#### [17.36.334](#) WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.335](#) WATER SUPPLY SYSTEMS: EXISTING SYSTEMS

(1) The provisions of (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) Existing non-public water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM [17.36.601](#), from:

(a) the setback requirements in ARM [17.36.323](#); and

(b) the well construction requirements of ARM [17.36.333](#), if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

(3) For existing non-public water supply systems within a proposed subdivision, the applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) The applicant shall submit, for each existing water supply source, water quality analyses for nitrates, nitrites and specific conductance. If an existing well is currently being used as a potable water supply within a proposed subdivision, a total coliform analysis must also be conducted. The nitrates, nitrites and specific conductance sample may not be older than one year prior to the date of the application. The coliform sample may not be older than six months prior to the date of application. If an existing well is not currently used as a potable water supply but will be converted to a potable water supply, a total coliform analysis must be conducted when it is put into use. The analysis must be performed by a laboratory certified by the department of public health and human services for analyses of water samples for public water systems. The reviewing authority may not approve the use of an existing system if there is evidence that, after appropriate treatment, the concentration of any ground water constituent exceeds the human health standards in Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2.

(b) To characterize the water supply, the applicant must show, through a well log or other means, the depth to static water in the well and the total well depth.

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18.

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#### [17.36.335](#) WATER SUPPLY SYSTEMS: EXISTING SYSTEMS

**History:** [76-4-104](#), MCA; [IMP](#), [76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.336](#) ALTERNATE WATER SUPPLY SYSTEMS

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [REP](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### [17.36.336](#) ALTERNATE WATER SUPPLY SYSTEMS

(1) The provisions of this rule apply only to proposed non-public alternate water supply systems in subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) A water source other than a well may be developed only if the applicant:

(a) shows that it is not economically feasible to develop a well or that ground water quality, quantity, or dependability is unacceptable; and

(b) complies with the other requirements set out in this rule.

(3) The applicant shall provide evidence to the reviewing authority that the alternate water source is sufficient in terms of quality, quantity, and dependability.

(4) Springs, when developed as an alternate water system, must be constructed in accordance with a plan approved by the reviewing authority and in accordance with Department Circular DEQ-11. Springs must also meet the requirements for wells regarding quality, quantity and dependability in [ARM 17.36.331](#) and [17.36.332](#).

(5) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) testing for pH, temperature, conductivity, and turbidity;

(ii) testing for parameters with human health standards listed in Department Circular DEQ-7;

(iii) testing for organisms that indicate direct influence by surface waters according to Department Circular PWS-5; and

(iv) seasonal bacteriological testing.

(b) The reviewing authority may determine the adequacy of water quantity and water dependability based upon flows during the seasonal low-flow period.

(6) Cisterns may be utilized only if:

(a) a potable water source is available for hauling within a reasonable distance from the cistern and:

(i) a licensed water hauler supplies water for the cistern and provides a letter verifying that the subdivision will be served by the hauler's business; or

(ii) the water supply is from a public water system and the owner of the public water system certifies that water is available from the public water system to serve the applicant's cistern;

(b) all water is hauled and disinfected in accordance with ARM Title 17, chapter 38, subchapter 5, or a reviewing authority-approved plan; and

(c) the cistern is constructed and installed in accordance with a plan approved by the reviewing authority and in accordance with department Circular DEQ-17.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2006 MAR p. 528, Eff. 2/24/06; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14.

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#### [17.36.340](#) LOT SIZES

(1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size.

(2) Subject to (4), each proposed new subdivision lot, area proposed for condominiums, or area proposed for permanent multiple spaces for recreational camping vehicles or mobile homes, must be of sufficient size to satisfy all of the following criteria:

(a) facilities on each lot must comply with the setback requirements in [ARM 17.36.323](#), except that setbacks for existing sewage systems may be waived pursuant to [ARM 17.36.327](#)(3);

(b) drainfield mixing zones must be located in compliance with [ARM 17.36.322](#)(5);

(c) well isolation zones must be located in compliance with [ARM 17.36.330](#)(4); and

(d) as shown on the lot layout document, each lot must have adequate space for the sewage treatment system, drainfield replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities. Easements may be used to satisfy this requirement.

(3) For lots created before July 1, 1973, and for which sanitary restrictions are proposed to be lifted, the requirements of (2)(a) and (d) apply, subject to the provisions of [ARM 17.36.106](#)(3).

(4) The reviewing authority may require lot sizes larger than those allowable under (2) if necessary to protect human health or water quality.

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2003 MAR p. 1804, Eff. 8/15/03; [AMD](#), 2013 MAR p. 265, Eff. 3/1/13; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14.

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#### [17.36.340](#) LOT SIZES

History: [76-4-104](#), MCA; [IMP, 76-4-104](#), MCA; [NEW](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2003 MAR p. 221, Eff. 2/14/03; [AMD](#), 2003 MAR p. 1804, Eff. 8/15/03; [AMD](#), 2013 MAR p. 265, Eff. 3/1/13; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

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#### **17.36.345 ADOPTION BY REFERENCE**

(1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) Department Circular DEQ-1, "Standards for Water Works," 2006 edition;
  - (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2012 edition;
  - (c) Department Circular DEQ-3, "Standards for Small Water Systems," 2006 edition;
  - (d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2009 edition;
  - (e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (October 2012 edition);
  - (f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," 2002 edition;
  - (g) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems," 2002 edition;
  - (h) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems," 2002 edition;
  - (i) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water," 2002 edition;
  - (j) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition; and
  - (k) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils.
- (2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2006 MAR p. 540, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2012 MAR p. 2067, Eff. 10/12/12.

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#### **17.36.345 ADOPTION BY REFERENCE**

(1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

- (a) Department Circular DEQ-1, "Standards for Water Works," 2018 edition;
  - (b) Department Circular DEQ-2, "Design Standards for Public Sewage Systems," 2018 edition;
  - (c) Department Circular DEQ-3, "Standards for Small Water Systems," 2018 edition;
  - (d) Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems," 2013 edition;
  - (e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (June 2019 edition);
  - (f) Department Circular DEQ-8, "Montana Standards for Subdivision Storm Drainage," 2017 edition;
  - (g) Department Circular DEQ-10, "Standards for the Development of Springs for Public Water Systems," 2014 edition;
  - (h) Department Circular DEQ-11, "Montana Standards for Development of Springs for Individual and Shared Non-public Systems," 2002 edition;
  - (i) Department Circular DEQ-16, "Standards for Hauled Water Cisterns for Noncommunity Public Systems," 2014 edition;
  - (j) Department Circular DEQ-17, "Montana Standards for Cisterns (Water Storage Tanks) for Individual Non-public Systems," 2002 edition;
  - (k) Department Circular PWS-5, "Ground Water Under the Direct Influence of Surface Water," 2002 edition;
  - (l) Department Circular PWS-6, "Source Water Protection Delineation," 1999 edition;
  - (m) the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993), which contain a recognized set of methods for identifying the nature and characteristics of soils; and
  - (n) ARM 17.30.1702 regarding setbacks between sewage lagoons and wells.
- (2) Copies of the documents incorporated by reference in this rule may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2006 MAR p. 540, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13; AMD, 2014 MAR p. 1802, Eff. 8/8/14; AMD, 2016 MAR p. 1008, Eff. 6/4/16; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2018 MAR p. 1588, Eff. 8/11/18; AMD, 2019 MAR p. 826, Eff. 6/22/19; AMD, 2019 MAR p. 836, Eff. 6/22/19.

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#### **17.36.345 ADOPTION BY REFERENCE**

This rule has been transferred.

**History:** 76-4-104, MCA; IMP, 76-4-104, MCA; NEW, 2000 MAR p. 3371, Eff. 12/8/00; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2003 MAR p. 221, Eff. 2/14/03; AMD, 2004 MAR p. 2589, Eff. 10/22/04; AMD, 2006 MAR p. 528, Eff. 2/24/06; AMD, 2006 MAR p. 540, Eff. 2/24/06; AMD, 2008 MAR p. 946, Eff. 5/9/08; AMD, 2009 MAR p. 1786, Eff. 10/16/09; AMD, 2010 MAR p. 1796, Eff. 8/13/10; AMD, 2012 MAR p. 2060, Eff. 10/12/12; AMD, 2012 MAR p. 2067, Eff. 10/12/12; AMD, 2013 MAR p. 2081, Eff. 11/15/13;

AMD, 2014 MAR p. 1802, Eff. 8/8/14; AMD, 2016 MAR p. 1008, Eff. 6/4/16; AMD, 2017 MAR p. 602, Eff. 5/13/17; AMD, 2018 MAR p. 1588, Eff. 8/11/18; AMD, 2019 MAR p. 826, Eff. 6/22/19; AMD, 2022 MAR p. 1695, Eff. 8/27/22; TRANS and AMD, to 17.36.126, 2023 MAR p. 324, Eff. 4/15/23.

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#### 17.36.601 WAIVERS--DEVIATIONS

- (1) The department may grant a waiver from a requirement of this subchapter only if a waiver is specifically authorized for that requirement and the applicant demonstrates that the conditions in the specific waiver authorization and in (3) are met.
- (2) The department may grant a deviation from a requirement of department circulars only if the applicant demonstrates to the department that all specific waiver conditions in the applicable circular and the conditions in (3) are met.
- (3) A request for a waiver or deviation must be in writing and must be accompanied by information substantiating the request and by the appropriate fee. The applicant shall also demonstrate that the waiver or deviation:
- (a) would be unlikely to cause pollution of state water in violation of 75-5-605, MCA;
  - (b) would protect the quality and potability of water for drinking water supplies and domestic uses and would protect the quality of water for other beneficial uses, including those uses specified in 76-4-101, MCA; and
  - (c) would not adversely affect public health, safety, and welfare.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02.

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#### 17.36.602 SUBDIVISIONS IN MASTER PLANNED AREA

This rule has been repealed.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; REP, 2002 MAR p. 1465, Eff. 5/17/02.

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#### 17.36.605 EXCLUSIONS

- (1) The exclusions in this rule are in addition to the exclusions set out in 76-4-111 and 76-4-125(2), MCA. A subdivision excluded under 76-4-111 or 76-4-125(2), MCA, is subject to review under 76-4-130, MCA, if the subdivision causes facilities previously approved under Title 76, chapter 4, part 1, MCA, to deviate from the conditions of approval.
- (2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:
- (a) a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel;
  - (b) a parcel that has a previous approval issued under Title 76, chapter 4, part 1, MCA, if:
    - (i) no facilities other than those previously approved exist or will be constructed on the parcel; and
    - (ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA;
  - (c) a parcel that will be affected by a proposed boundary line adjustment, if the parcel has existing facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, and if:
    - (i) no facilities, other than those in existence prior to the boundary line adjustment, or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel;
    - (ii) existing facilities on the parcel complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and
    - (iii) the local health officer determines that existing facilities are adequate for the existing use. As a condition of the exemption, the local health officer may require evidence that:
      - (A) existing septic tanks have been pumped within the previous three years;
      - (B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield;
      - (C) existing wells are adequate for the proposed uses; and
      - (D) adequate storm drainage and solid waste disposal are provided.
- (3) Aggregations of parcels are not subdivisions subject to review, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.

**History:** 76-4-104, MCA; IMP, 76-4-125, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73; AMD, Eff. 11/3/75; AMD, Eff. 5/6/76; AMD, 1977 MAR p. 746, Eff. 10/25/77; AMD, 1984 MAR p. 1027, Eff. 7/13/84; AMD, 1992 MAR p. 2145, Eff. 9/25/92; TRANS, from DHES, 1996 MAR p. 1499; AMD, 2002 MAR p. 1465, Eff. 5/17/02; AMD, 2013 MAR p. 265, Eff. 3/1/13; AMD, 2014 MAR p. 2098, Eff. 9/19/14.

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#### 17.36.606 EXCLUSIONS--COMPLIANCE WITH PUBLIC WATER SUPPLY ACT

This rule has been repealed.

History: [76-4-104](#), MCA; [IMP](#), [76-4-125](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 11/4/73; [AMD](#), Eff. 11/3/75; [AMD](#), Eff. 5/6/76; [AMD](#), 1977 MAR p. 746, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### **[17.36.610](#) CERTIFYING AUTHORITY UNDER [76-4-127](#), MCA**

- (1) A county water and/or sewer district is eligible to be a certifying authority under [76-4-127](#), MCA, if the district:
- (a) is incorporated under Title 7, chapter 13, MCA;
  - (b) is in compliance with Title 75, chapters 5 and 6, MCA;
  - (c) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities; and
  - (d) has a utility master plan approved by the department within the past 10 years that addresses capacity of the water and wastewater systems to serve additional development in compliance with department design circulars.
- (2) A municipality is eligible to be a certifying authority under [76-4-127](#), MCA, if the municipality:
- (a) is in compliance with Title 75, chapters 5 and 6, MCA;
  - (b) is a first or second class municipality or is within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA; and
  - (c) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities.

History: [76-4-104](#), MCA; [IMP](#), [76-4-104](#), [76-4-125](#), [76-4-127](#), MCA; [NEW](#), 2020 MAR p. 319, Eff. 3/1/20.

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#### **[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 divisions of land, condominiums, and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees are based on the complexity of the subdivision, including the number of lots, the type of water system to serve the development, the type of wastewater disposal to serve the development, and the degree of environmental research necessary to supplement the review procedure.

History: [76-4-105](#), MCA; [IMP](#), [76-4-105](#), MCA; [NEW](#), EMERG, Eff. 5/15/75; [NEW](#), Eff. 9/5/75; [AMD](#), Eff. 5/6/76; [AMD](#), EMERG, 1977 MAR p. 536, Eff. 9/6/77; [AMD](#), 1977 MAR p. 750, Eff. 10/25/77; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 1998 MAR p. 646, Eff. 3/13/98; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02.

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#### **[17.36.802](#) FEE SCHEDULES**

- (1) An applicant for approval under this subchapter shall pay the following fees:
- (a) type of lots:
    - (i) subdivision lot or parcel or townhouse \$ 160
    - (ii) condominium/trailer court/recreational camping vehicle campground unit or space \$ 60
    - (iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel \$ 90
  - (b) type of water system:
    - (i) individual or shared water supply system (existing and proposed) per unit \$ 110
    - (ii) multiple-user system (non-public):
      - (A) - each new system \$ 400 (plus \$ 130/hour for review in excess of four hours)
      - (B) - new distribution system design per lineal foot \$ 0.30
      - (C) - connection to distribution system per lot or unit \$ 90
    - (iii) public water system:
      - (A) new system per component per ARM [17.38.106](#) fee schedule
  - (c) type of wastewater disposal:
    - (i) existing systems per unit \$ 90
    - (ii) new gravity fed system per drainfield \$ 120
    - (iii) new dosed system, 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) per design \$ 240 (plus \$ 130/hour for review in excess of two hours)
      - (B) per drainfield \$ 60
    - (iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems \$ 120 (plus \$ 130/hour in excess of two hours)
    - (v) multiple-user wastewater system (non-public):
      - (A) - new collection system design per lineal foot \$ 0.30
      - (B) - connection to collection system per lot or unit \$ 90
    - (vi) new public wastewater system per component per ARM [17.38.106](#) fee schedule
  - (d) other:
    - (i) deviation from circular per request or design \$ 250 (plus \$ 130/hour for review in excess of two hours)
    - (ii) waiver from rule per request \$ 250 (plus \$ 130/hour for review in excess of two hours)

- (iii) reissuance of original approval statement per request \$ 70
- (iv) review of revised lot layout document per request \$ 160
- (v) municipal facilities exemption checklist (former master plan exemption) per application \$ 120
- (vi) nonsignificance determinations/categorical exemption reviews:
  - (A) - individual/shared systems per drainfield \$ 70 (plus \$ 130/hour for review in excess of two hours)
  - (B) - multiple-user non-public systems per lot or structure \$ 40 (plus \$ 130/hour for review in excess of two hours)
  - (C) source specific mixing zone per drainfield \$ 250
  - (D) - public systems per drainfield per ARM [17.38.106](#) fee schedule
- (vii) storm drainage plan review:
  - (A) - Circular DEQ-8 simple plan review per project \$ 130
  - (B) - Circular DEQ-8 standard plan review:
    - (I) per project \$ 220
    - (II) plus per lot \$ 50 (plus \$ 130/hour for review in excess of 30 minutes per lot)
- (viii) preparation of environmental assessments/environmental impact statements: actual cost
- (ix) review for compliance with ARM [17.30.718](#) \$900.00 (plus \$130/hour for review in excess of 6 hours).

**History:** [76-4-105](#), MCA; [IMP, 76-4-105](#), MCA; [NEW](#), EMERG, Eff. 5/15/75; [NEW](#), Eff. 9/5/75; [AMD](#), Eff. 5/6/76; [AMD](#), EMERG, 1977 MAR p. 536, Eff. 9/6/77; [AMD](#), 1977 MAR p. 750, Eff. 10/25/77; [AMD](#), 1980 MAR p. 2967, Eff. 11/29/80; [AMD](#), 1981 MAR p. 1288, Eff. 10/30/81; [AMD](#), 1983 MAR p. 851, Eff. 7/15/83; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [AMD](#), 1993 MAR p. 542, Eff. 4/16/93; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 1998 MAR p. 646, Eff. 3/13/98; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2009 MAR p. 2477, Eff. 12/25/09; [AMD](#), 2013 MAR p. 1827, Eff. 10/18/13; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2020 MAR p. 319, Eff. 3/1/20.

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#### [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) review performed pursuant to subchapter 1 to determine whether:
    - (i) the application complies with subchapter 3;
    - (ii) to grant a waiver or deviation pursuant to ARM [17.36.601](#); or
    - (iii) the proposed subdivision is excluded from review pursuant to ARM [17.36.605](#);
  - (b) review performed pursuant to ARM [17.30.706](#) to determine whether significant degradation will occur;
  - (c) review performed pursuant to ARM [17.30.707](#), [17.30.708](#), [17.30.715](#), or [17.30.716](#), regarding nondegradation;
  - (d) preparation of an environmental assessment pursuant to ARM [17.4.609](#) and [17.4.610](#), including costs of gathering data and information, analysis, printing, distribution, and hearing costs;
  - (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) reimbursement of local government entities as provided in (2) and (3); and
  - (g) conducting inspections and enforcement activities pursuant to [76-4-107](#) and [76-4-108](#), MCA.
- (2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:
  - (a) for subdivisions with individual wastewater treatment systems, the department shall reimburse \$35 per lot plus 80 percent of the review fee under ARM [17.36.802](#) for the following actions performed by the local governing body:
    - (i) each review of water, storm water, and wastewater systems;
    - (ii) nonsignificance determinations and categorical exemptions; and
    - (iii) review of revised lot layout documents.
- (3) The department may reimburse counties that have not been delegated review authority but that perform review services including, but not limited to, inspection of proposed and approved facilities and assistance to persons in the application procedure as follows:
  - (a) \$35 per parcel for subdivisions with individual or shared wastewater treatment systems. A site evaluation must accompany the submittal.
  - (4) Funds must be reimbursed to the local governing bodies quarterly, based upon the fiscal year starting on July 1 and ending on June 30 of each year.

**History:** [76-4-105](#), MCA; [IMP, 76-4-105](#), MCA; [NEW](#), EMERG, Eff. 5/15/75; [NEW](#), Eff. 9/5/75; [AMD](#), Eff. 5/6/76; [AMD](#), EMERG, 1977 MAR p. 536, Eff. 9/6/77; [AMD](#), 1977 MAR p. 750, Eff. 10/25/77; [AMD](#), 1980 MAR p. 2967, Eff. 11/29/80; [AMD](#), 1981 MAR p. 1288, Eff. 10/30/81; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [AMD](#), 1992 MAR p. 2145, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 1998 MAR p. 646, Eff. 3/13/98; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2014 MAR p. 2098, Eff. 9/19/14; [AMD](#), 2016 MAR p. 722, Eff. 4/23/16; [AMD](#), 2018 MAR p. 1588, Eff. 8/11/18.

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#### [17.36.805](#) CHANGES IN SUBDIVISION

- (1) If, during the review process, or after approval, an applicant proposes to change the water supply system, wastewater treatment system, storm water drainage plan, or solid waste disposal plan of a subdivision or if such changes are necessitated by a department determination that proposed plans are inadequate, such changes must be submitted to the reviewing authority for review and are subject to the resubmittal review fee and fees for the components proposed for change as listed in ARM [17.36.802](#).

(2) Other changes for plan components not listed in ARM [17.36.802](#) are also subject to additional review fees. The department shall determine the exact amount of the additional fee based on how much review time the change(s) require. Review time must be charged at the rate of \$105 per hour with a minimum charge of \$105.

History: [76-4-105](#), MCA; [IMP, 76-4-105](#), MCA; [NEW](#), EMERG, Eff. 5/15/75; [NEW](#), Eff. 9/5/75; [AMD](#), Eff. 5/6/76; [AMD](#), EMERG, 1977 MAR p. 536, Eff. 9/6/77; [AMD](#), 1977 MAR p. 750, Eff. 10/25/77; [AMD](#), 1984 MAR p. 1027, Eff. 7/13/84; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 1998 MAR p. 646, Eff. 3/13/98; [AMD](#), 2002 MAR p. 1465, Eff. 5/17/02; [AMD](#), 2009 MAR p. 2477, Eff. 12/25/09; [AMD](#), 2013 MAR p. 1827, Eff. 10/18/13

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#### [17.36.901](#) SCOPE

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.902](#) GENERAL REQUIREMENTS

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2000 MAR p. 3398, Eff. 12/8/00; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.903](#) DEFINITIONS

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP](#), Sec. [75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2000 MAR p. 3398, Eff. 12/8/00; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.907](#) TECHNICAL REQUIREMENTS

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [AMD](#), 2000 MAR p. 3398, Eff. 12/8/00; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.909](#) VARIANCE APPEALS TO THE DEPARTMENT

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.910](#) LOCAL VARIANCES

This rule has been repealed.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 1992 MAR p. 2148, Eff. 9/25/92; [TRANS](#), from DHES, 1996 MAR p. 1499; [REP](#), 2003 MAR p. 222, Eff. 2/14/03.

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#### [17.36.911](#) SCOPE

(1) These rules are intended to protect the public health, safety, and welfare by setting forth minimum standards for the construction, alteration, repair, extension, and use of wastewater treatment systems within the state.

(2) Under [50-2-116](#), MCA, local boards of health must adopt regulations no less stringent than this subchapter 9 for wastewater treatment systems for private and public buildings and facilities.

History: [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09.

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#### [17.36.912](#) DEFINITIONS

For purposes of this subchapter, the following definitions apply:

(1) "Absorption bed" means an absorption system that consists of excavations greater than three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(2) "Absorption trench" means an absorption system that consists of excavations less than or equal to three feet in width where the distribution system is laid for the purpose of distributing pretreated waste effluent into the ground.

(3) "Bedrock" means material that cannot be readily excavated by hand tools, or material that does not allow water to pass through or that has insufficient quantities of fines to provide for the adequate treatment and disposal of wastewater. The term does not include gravel and other rock fragments as defined in Department Circular DEQ-4, Appendix B.

(4) "Cesspool" means a seepage pit without a septic tank to pretreat the wastewater.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(6) "Department" means the Montana Department of Environmental Quality.

(7) "Drainage way" means a course or channel along which storm water moves in draining an area.

(8) "Experimental system" means a wastewater treatment system for which specific design standards are not provided in Department Circular DEQ-4, DEQ-2, or this subchapter.

(9) "Failed system" means a wastewater treatment and/or disposal system that no longer provides the treatment and/or disposal for which it was intended, or violates any of the requirements of ARM [17.36.914](#).

(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) "Gray water" means wastewater that is collected separately from a sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets.

(12) "Ground water observation well" means a well installed for the purpose of measuring the depth from the natural ground surface to the seasonally high ground water.

(13) "Holding tank" means a watertight receptacle that receives wastewater for retention and does not, as part of its normal operation, dispose or treat the wastewater. The term does not include surge tanks used in a gray water irrigation system if the system meets the requirements of ARM [17.36.919](#).

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial unit. The term does not include a public sewage system as defined in [75-6-102](#), MCA.

(16) "Limiting layer" means bedrock, an impervious layer, or seasonally high ground water.

(17) "Living unit" means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. For example, a duplex is considered two living units.

(18) "Multiple-user wastewater system" means a wastewater system that serves or is intended to serve more than two living units or commercial units or a combination, but which is not a public sewage system as defined in [75-6-102](#), MCA. 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.

(19) "Municipal" means pertaining to an incorporated city or town.

(20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

(21) "Piped water supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(22) "Pit privy" means a pit that receives undiluted, non-water-carried toilet wastes.

(23) "Replacement system" means a wastewater treatment system proposed to replace a failed, failing, or contaminating system.

(24) "Reviewing authority" means a local board of health or local health officer, as those terms are defined in [50-2-101](#), MCA, or their designees.

(25) "Sealed pit privy" means an enclosed receptacle designed to receive non-water-carried toilet wastes into a watertight vault.

(26) "Seasonally high ground water" means the depth from the natural ground surface to the upper surface of the zone of saturation, as measured in an unlined hole or perforated monitoring well during the time of the year when the water table is the highest. The term includes the upper surface of a perched water table.

(27) "Seepage pit" means a covered underground receptacle that receives wastewater after primary treatment and allows the wastewater to seep into the surrounding soil.

(28) "Septic tank" means a wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(29) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial units or a combination of both. The term does not include a public sewage system as defined in [75-6-102](#), MCA.

(30) "Site evaluation" means an evaluation to determine if a site is suitable for the installation of a subsurface wastewater treatment system.

(31) "Slope" means the rate that a ground surface declines in feet per 100 feet. It is expressed as percent of grade.

(32) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.

(33) "Subsurface wastewater treatment system" means the process of wastewater treatment in which the effluent is applied below the soil surface or into a mound by an approved distribution system.

(34) "Variance" means the grant, pursuant to ARM [17.36.922](#), by the reviewing authority of an exception to the minimum requirements set out in this subchapter or Department Circular DEQ-4.

(35) "Wastewater" means water-carried wastes. For purposes of these rules, wastewater does not include storm water. The term includes, but is not limited to, the following:

- (a) household, commercial, or industrial wastes;
- (b) chemicals;
- (c) human excreta; or
- (d) animal and vegetable matter in suspension or solution.

(36) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, all disposal methods described in Department Circular DEQ-4.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2004 MAR p. 2579, Eff. 10/22/04; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

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### [17.36.913](#) GENERAL REQUIREMENTS

- (1) No person may construct, alter, extend, or utilize a wastewater treatment or disposal system that may:
- (a) contaminate any actual or potential drinking water supply;
  - (b) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
  - (c) cause a public health hazard by being accessible to persons or animals;
  - (d) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter;
  - (e) pollute or contaminate state waters, in violation of [75-5-605](#), MCA;
  - (f) degrade state waters unless authorized pursuant to [75-5-303](#), MCA; or
  - (g) cause a nuisance due to odor, unsightly appearance or other aesthetic consideration.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03.

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### [17.36.914](#) WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS

(1) Except as provided in ARM [17.36.916](#), all wastewater treatment systems must be designed and constructed in accordance with the applicable requirements in ARM [17.36.913](#) and in Department Circular DEQ-4.

(2) Department Circular DEQ-4, 2013 edition, which sets forth standards for subsurface sewage treatment systems, and Department Circular DEQ-2, 2016 edition, which sets forth design standards for public sewage systems, are adopted and incorporated by reference for purposes of this subchapter. All references to these documents in this subchapter refer to the editions set out above. Copies are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(3) Wastewater treatment systems must be located to maximize the vertical separation distance from the bottom of the absorption trench to the seasonally high ground water level, bedrock, or other limiting layer, but under no circumstances may this vertical separation be less than four feet of natural soil.

(4) A replacement area or replacement plan must be provided for each new or expanded wastewater treatment system. Replacement areas and plans must comply with the requirements of this subchapter.

(5) A site evaluation must be performed for each wastewater treatment system. As determined by the reviewing authority, the site evaluation may include the following:

(a) soil descriptions for proposed wastewater treatment systems. Soil descriptions must be based on data obtained from test holes within 25 feet of each wastewater treatment location. Test holes must be at least eight feet in depth unless a limiting layer precludes digging to eight feet;

(b) percolation test results within the boundaries of the proposed wastewater treatment system; and

(c) if the applicant or the reviewing authority has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the system, the applicant must provide data to demonstrate that the minimum separation distance required by (3) between the absorption trench bottom and the seasonally high ground water level can be maintained. The reviewing authority may require the applicant to install ground water observation wells to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation wells through the seasonally high ground water period. Measurement must occur for a long enough period of time to detect a peak and a sustained decline in the ground water level.

(6) If a department-approved public collection and treatment system is readily available within a distance of 200 feet of the property line for connection to a new source of wastewater, or as a replacement for a failed system, and the owner or managing entity of the public collection and treatment system approves the connection, wastewater must be discharged to the public system. For purposes of this rule:

(a) a public system is not "readily available" if there is evidence demonstrating that connection to the system is physically or economically impractical, or that easements cannot be obtained; and

(b) a connection is "economically impractical" if the cost of connection to the public system equals or exceeds three times the cost of installation of an approvable system on the site.

(7) Wastewater treatment systems, except for sealed components that are designed, constructed, and tested as set out in ARM [17.36.918](#), may not be located in drainage ways.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2004 MAR p. 2579, Eff. 10/22/04; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2012 MAR p. 2067, Eff. 10/12/12; [AMD](#), 2013 MAR p. 2081, Eff. 11/15/13; [AMD](#), 2016 MAR p. 1008, Eff. 6/4/16.

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### [17.36.914](#) WASTEWATER TREATMENT SYSTEMS - TECHNICAL REQUIREMENTS

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2004 MAR p. 2579, Eff. 10/22/04; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2012 MAR p. 2067, Eff. 10/12/12; [AMD](#), 2013 MAR p. 2081, Eff. 11/15/13; [AMD](#), 2016 MAR p. 1008, Eff. 6/4/16; [AMD](#), 2023 MAR p. 324, Eff. 4/15/23.

**17.36.916 ABSORPTION BEDS, HOLDING TANKS, SEEPAGE PITS, PIT PRIVIES, CESSPOOLS - TECHNICAL REQUIREMENTS AND PROHIBITIONS**

- (1) The wastewater treatment systems described in (3) through (7) may be allowed only if the reviewing authority determines that:
- (a) site constraints prevent the applicant from constructing any system described in Department Circular DEQ-4;
  - (b) all off-site treatment alternatives have been considered and are infeasible;
  - (c) the requirements of ARM [17.36.913](#) are met; and
  - (d) all other requirements in this subchapter applicable to the proposed system are met.
- (2) Applications for permits for wastewater treatment systems described in (3) through (7) must include a demonstration that no other alternatives to wastewater disposal are feasible.
- (3) Absorption beds may be used for replacement systems only and may not be constructed in unstabilized fill. Absorption beds must also meet the design and construction requirements in Department Circular DEQ-4.
- (4) Seepage pits may be used for replacement systems only, and only when no other means of treatment and disposal is available.
- (a) Seepage pits must have a minimum vertical separation of 25 feet between the bottom of the pit and ground water.
  - (b) Permit applications for seepage pits must include plans for the proposed pit. Seepage pits must meet the design and construction requirements in Department Circular DEQ-4.
- (5) Holding tank systems may be approved only if the facility to be served is for seasonal use.
- (a) For purposes of this rule "seasonal use" means use for not more than a total of four months (120 days) during any calendar year. Permit applications for holding tanks must show that the property use conforms to the "seasonal use" limitation or that a variance has been granted.
  - (b) Holding tanks must meet the design and construction requirements in Department Circular DEQ-4.
  - (c) Permit applications for holding tanks must include plans for the proposed holding tank system. The plans must include the following information:
    - (i) the method for monitoring tank levels;
    - (ii) the method for waterproofing the tank;
    - (iii) a maintenance plan, which must include annual water tightness testing and periodic pumping by a licensed septic tank pumper;
- and
- (iv) the method for tank stabilization if seasonal high ground water is expected to be within 12 inches of tank's base.
- (6) Sealed pit privy systems may be approved only if the facility to be served does not have a piped water supply, and the facility is a seasonal-use recreational site.
- (a) Permit applications for sealed pit privies must include plans for the proposed sealed pit. Sealed pit privy systems must meet the design and construction requirements in Department Circular DEQ-4.
- (7) Unsealed pit privies may be approved only for seasonal use in remote locations that are not accessible to septic tank pumpers.
- (8) New construction or alteration of cesspools is prohibited.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2004 MAR p. 2579, Eff. 10/22/04; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09.

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**17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS**

- (1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1  
SETBACK DISTANCES  
(in feet)

From	To Sealed components (1) and other components (2)	To Absorption systems (3)
Public or multiple-user drinking water wells/springs	100	100
Individual and shared drinking water supply wells	50	100
Other wells (4)	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (5)	25
Slopes > 35 percent (6)	10 (5)	25
Property boundaries (7)	10	10
Subsurface drains	10	10
Water mains (8)	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10

Surface water, springs	50	100
Floodplains	--Sealed components - no setbacks (1) Other components - 100 (2)	100

(1) Sealed components include holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least ten feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.

(2) Other components include the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include the systems addressed in Department Circular DEQ-4, Chapters 6 and 8 subject to the limitations in ARM [17.36.916](#).

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

(5) Sewer lines and sewer mains may be located in roadways and on steep slopes if the lines and mains are safeguarded against damage.

(6) Down-gradient of the sealed component, other component, or drainfield/sand mound.

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(3) If the floodplain has not been designated and its level relative to a wastewater system is in question, the applicant shall submit evidence adequate to allow the reviewing authority to establish the location of the floodplain.

(4) Sealed components of wastewater treatment systems, if located within a 100-year floodplain, must be designed and constructed to prevent surface water and ground water inundation, and pump lines must be pressure tested prior to use. Pipes must have a pressure rating of at least two times the operating pressure or pump shutoff pressure, whichever is greater. Pipes must be tested at 1 1/2 times the operating pressure or pump shutoff pressure, whichever is greater, or must be tested as specified by the manufacturer.

(5) The setbacks in this rule are not applicable to gray water irrigation systems that meet the requirements of ARM [17.36.919](#).

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2014 MAR p. 1824, Eff. 8/8/14.

#### [17.36.919](#) GRAY WATER REUSE

(1) Except as provided in (2) and (3), treatment and disposal of gray water must be by means of a wastewater treatment system that meets all of the requirements of this subchapter and applicable department circulars. Gray water reuse within a building or residence for uses such as toilet flushing is permitted without a permit under this subchapter, provided that the gray water is ultimately disposed of by means of a wastewater treatment system that is in compliance with this subchapter and applicable department circulars.

(2) Gray water may be used for irrigation as provided in (3). If a gray water irrigation system meets all of the requirements in (3), the system is not subject to the requirements of ARM [17.36.914](#), [17.36.916](#), and [17.36.918](#).

(3) Gray water that is collected separately from sewage flow and that does not contain industrial chemicals, hazardous wastes, or wastewater from toilets may be used for irrigation, if the following requirements are met:

(a) prior to installation, a gray water irrigation system must obtain a permit under this subchapter;

(b) gray water irrigation must be subsurface, using a collection and application system that is designed, installed, and used in accordance with Department Circular DEQ-4;

(c) as provided in [75-5-326](#), MCA, gray water may not be used to irrigate plants to be consumed by humans, and gray water systems may not be located in a floodplain, as defined in [76-5-103](#), MCA. For purposes of this rule, "plants to be consumed by humans" does not include nut and fruit trees;

(d) there must be a minimum vertical separation of four feet of natural soil between the point of gray water application and a limiting layer, as defined in ARM [17.36.912](#);

(e) gray water irrigation may not occur within:

(i) 100 feet of wells;

(ii) 100 feet of surface water;

(iii) 100 feet of a flood plain; or

(iv) two feet of a property line;

(f) gray water from kitchens may be used for irrigation only where a waste segregation system is used. For purposes of this rule, a "waste segregation system" consists of dry disposal of toilet waste by a method such as composting, chemical, dehydrating, or incinerator treatment, with a separate disposal method for gray water;

(g) if required under Title 76, chapter 4, MCA, and implementing rules, a gray water irrigation system must obtain subdivision approval from the department.

(4) Soil descriptions must be provided for each proposed gray water irrigation system. Soils must be described in accordance with Appendix B of Department Circular DEQ-4.

(5) Gray water irrigation systems with a design flow greater than or equal to 2,500 gallons per day must be designed by a professional engineer.

(6) The reviewing authority may require user agreements for systems that serve more than one user. The reviewing authority may require easements for systems that cross property lines.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2009 MAR p. 1786, Eff. 10/16/09.

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## **17.36.920 PERMITS**

(1) The reviewing authority shall administer a permit system for the construction, alteration, repair, and extension of wastewater treatment and disposal systems.

(2) Permit applications must:

- (a) identify the owner of the system, location of the system, and type of system to be installed;
- (b) provide a justification for the type of system proposed;
- (c) include a drawing of the lot layout with legend and scale; and
- (d) show separation distances for the features indicated in ARM [17.36.918](#).

(3) The reviewing authority shall maintain records of all permits.

(4) For permits for new or increased sources, the reviewing authority shall show on the permit the method used for the non-significance determination made pursuant to ARM Title 17, chapter 30, subchapter 7.

(5) For permits issued for replacement of wastewater treatment systems that do not meet minimum standards for subdivisions as set out in ARM Title 17, chapter 36, subchapter 3, the reviewing authority shall notify the owner that the design may limit the ability of the owner to subdivide the property.

**History:** [75-5-201](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03.

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## **17.36.922 LOCAL VARIANCES**

(1) As provided in this rule, a local board of health, as defined in [50-2-101](#), MCA, may grant variances from the requirements in this subchapter and in Department Circular DEQ-4, except for requirements established by statute.

(2) The local board of health may grant a variance from a requirement only if it finds that all the following criteria are met:

(a) granting the variance will not:

- (i) contaminate any actual or potential drinking water supply;
- (ii) cause a public health hazard as a result of access to insects, rodents, or other possible carriers of disease to humans;
- (iii) cause a public health hazard by being accessible to persons or animals;
- (iv) violate any law or regulation governing water pollution or wastewater treatment and disposal, including the rules contained in this subchapter except for the rule that the variance is requested from;

(v) pollute or contaminate state waters, in violation of [75-5-605](#), MCA;

(vi) degrade state waters unless authorized pursuant to [75-5-303](#), MCA; or

(vii) cause a nuisance due to odor, unsightly appearance, or other aesthetic consideration;

(b) compliance with the requirement from which the variance is requested would result in undue hardship to the applicant;

(c) the variance is necessary to address extraordinary conditions that the applicant could not reasonably have prevented;

(d) no alternatives that comply with the requirement are reasonably feasible; and

(e) the variance requested is not more than the minimum needed to address the extraordinary conditions.

(3) The local board of health's decision regarding a variance of a requirement in this subchapter or in Department Circular DEQ-4 may be appealed to the department pursuant to ARM [17.36.924](#).

**History:** [75-5-201](#), [75-5-305](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2005 MAR p. 86, Eff. 10/22/04; [AMD](#), 2009 MAR p. 1786, Eff. 10/16/09; [AMD](#), 2011 MAR p. 1548, Eff. 8/12/11.

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## **17.36.924 VARIANCE APPEALS TO THE DEPARTMENT**

(1) Upon receiving an appeal of a local board of health's variance decision under [75-5-305](#), MCA, the department shall determine within 30 days whether the appeal meets the requirements of (2) and notify the appellant in writing of its determination.

(2) The appeal to the department must be in writing and must provide the following information:

(a) the name of the appellant;

(b) the local government entity or entities that made the decision on the application for variance at the local level;

(c) a summary explanation of the project or development for which the variance is requested;

(d) a summary explanation of the variance that is sought;

(e) a statement of the law or ordinance at issue in the matter; and

(f) copies of all applications and supporting materials submitted to the local board of health, and of any written decisions issued by the local board of health.

(3) If the appeal does not fulfill the requirements of (2), the department shall state in its notice to the appellant the deficiencies that must be addressed in a resubmittal. The department shall also notify the appellant in writing when its submittal meets the requirements of (2).

(4) If the appeal fulfills the requirements of (2), the department shall proceed to review the local variance decision under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.

(5) As provided in [2-4-612](#), MCA, the common law and statutory rules of evidence apply in department proceedings to review local board variance decisions. The parties may provide evidence and testimony to the department in addition to that presented to the local board.

(6) In evaluating the local board variance decision, the department shall apply the variance criteria in ARM [17.36.922](#)(2), and may not consider local variance criteria. The department may substitute its judgment for that of the local board as to the interpretation and application of the variance criteria in ARM [17.36.922](#)(2). However, the department shall be bound by the local board's interpretation of other local board rules in effect at the time of the local board's decision.

(7) Challenges to the applicability or validity of a rule of the local board are outside the scope of department review. Variance requests that do not seek to go below a state minimum standard are also outside the scope of department review. If a variance is requested from a local requirement that is more stringent than the requirements in this subchapter, the department may review the local board's decision only if the variance, if granted, would also require a variance from the requirements in this subchapter.

(8) The department shall issue a formal decision, including findings of fact and conclusions of law, within 30 days after the hearing process is completed.

**History:** [75-5-201](#), [75-5-305](#), MCA; [IMP, 75-5-305](#), MCA; [NEW](#), 2003 MAR p. 222, Eff. 2/14/03; [AMD](#), 2011 MAR p. 1548, Eff. 8/12/11.

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#### [17.36.1101](#) PURPOSE

This rule has been transferred.

**History:** [75-6-103](#), MCA; [IMP, 75-6-109](#), MCA; [NEW](#), 1995 MAR p. 282, Eff. 2/10/95; [TRANS](#), from DHES, 1996 MAR p. 1499; [TRANS](#), to [17.38.601](#), 1998 MAR p. 2754, Eff. 10/9/98.

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#### [17.36.1102](#) DEFINITIONS

This rule has been transferred.

**History:** [75-6-103](#), MCA; [IMP, 75-6-109](#), MCA; [NEW](#), 1995 MAR p. 282, Eff. 2/10/95; [TRANS](#), from DHES, 1996 MAR p. 1499; [TRANS](#), to [17.38.602](#), 1998 MAR p. 2754, Eff. 10/9/98.

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#### [17.36.1103](#) ENFORCEMENT PROCEDURES

(transferred)

**History:** [75-6-103](#), MCA; [IMP, 75-6-109](#), MCA; [NEW](#), 1995 MAR p. 282, Eff. 2/10/95; [TRANS](#), from DHES, 1996 MAR p. 1499; [TRANS](#), [17.38.603](#), 1998 MAR p. 2754, Eff. 10/9/98.

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#### [17.36.1106](#) ADMINISTRATIVE PENALTIES

This rule has been transferred.

**History:** [75-6-103](#), MCA; [IMP, 75-6-109](#), MCA; [NEW](#), 1995 MAR p. 282, Eff. 2/10/95; [TRANS](#), from DHES, 1996 MAR p. 1499; [TRANS](#), to [17.38.606](#), 1998 MAR p. 2754, Eff. 10/9/98.

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#### [17.36.1107](#) SUSPENDED PENALTIES

This rule has been transferred.

**History:** [75-6-103](#), MCA; [IMP, 75-6-109](#), MCA; [NEW](#), 1995 MAR p. 282, Eff. 2/10/95; [TRANS](#), from DHES, 1996 MAR p. 1499; [TRANS](#), to [17.36.607](#), 1998 MAR p. 2754, Eff. 10/9/98.

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