



March 25, 2026

TO: Members of the Water Pollution Control Advisory Council & the public

FROM: Rachel Clark, Engineering Bureau Chief *RC*

MEETING DATE: 4/6/26

SUBJECT: Rulemaking Package for 2025 House Bill 923

ACTION REQUIRED BY COUNCIL:

*Briefing item only.*

BACKGROUND:

House Bill 923 from the 2025 legislative session directed the department to amend ARM 17.30.718 to allow review of a wastewater discharge without a background nitrogen sample where ground water is absent or at a great depth.

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

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

The Department proposes to use the existing GWIC database to define "absence." By establishing absence of wells in adjacent sections, any locations that could potentially be acceptable have been shown to be without wells. Using the section-based approach rather than a set radius allows applicants to easily search the GWIC database to a consistent area.

To interpret the term "great depth," the department proposes to look to GWIC for whether ground water has been documented at a depth of less than 300 feet under the ground surface of that section and eight surrounding sections.

Please contact us with any questions (*Rachel Clark, Engineering Bureau Chief, P.O. Box 200901, Helena, MT 59620; 406.444.1277, rachel.clark2@mt.gov*)

Attachments:

1. *House Bill 923*
2. *Draft Proposed Rule Language and Reason Statement*



AN ACT REVISING CATEGORICAL EXCLUSIONS FROM A NONDEGRADATION AUTHORIZATION;  
DIRECTING THE AMENDMENT OF ARM 17.30.716; PROVIDING AN APPROPRIATION; AND PROVIDING  
EFFECTIVE DATES AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Department to amend rule.** The department of environmental quality shall amend ARM 17.30.716 to insert a new subsection (8) that reads:

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

**Section 2. Appropriation.** There is appropriated \$500 from the general fund to the department of environmental quality for the biennium beginning July 1, 2025, to amend the department's rules pursuant to [section 1].

**Section 3. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 2025.

**Section 4. Applicability.** [This act] applies to applications for nondegradation authorizations received on or after May 1, 2025.

- END -

I hereby certify that the within bill,  
HB 923, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

## AMEND

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

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

- (1) In addition to the activities listed in 75-5-317 , MCA, the categories or classes of activities that are identified in this rule have been determined by the department to cause changes in water quality that are nonsignificant due to their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301 , MCA.
- (2) A wastewater treatment system that does not require an MPDES or MGWPCS permit and meets the criteria in (3) and (4) is nonsignificant.
- (3) The wastewater treatment system, including primary and replacement absorption systems, must meet the following criteria:
  - (a) the absorption systems must be 500 feet or more (200 feet or more for lots that meet the criteria in (4)(b)) from the nearest downgradient high-quality state surface water that might be impacted. Distance between the absorption system and downgradient high-quality state surface water is based on the criteria in ARM 17.30.715(4);
  - (b) the wastewater treatment systems on a lot must have a combined design flow of 600 gallons per day or less, or a combined design flow of 800 gallons per day or less if all the wastewater treatment systems on the lot are level 2;
  - (c) the wastewater discharge must be residential strength;
  - (d) each wastewater treatment system must be located entirely on the lot where wastewater is produced;
  - (e) each wastewater treatment system must meet the current design standards defined in ARM Title 17, chapter 36, subchapters 3 and 9, and Department Circular DEQ-4; and
  - (f) all wastewater treatment systems on the lot must meet the requirements in this rule.
- (4) A wastewater treatment system that meets the requirements in (3) must also meet:
  - (a) all the requirements in one of the categories in Table 1; or
  - (b) the following requirements:
    - (i) the wastewater treatment system is in a county where the total number of subdivision lots that were reviewed pursuant to Title 76, chapter 4, part 1, MCA, and were created in that county during the previous 10 state fiscal years is fewer than 150;
    - (ii) the lot is not within one mile of the city limits of an incorporated city or town with a population greater than 500 as determined by the most recent census; and
    - (iii) the absorption system is pressure dosed.

(c)

Table 1

	Requirement	Category <sup>(1)</sup>						
		1	2	3	4	5	6	7
(i)	Minimum lot size (acres)	2	2	1	2	1	2	20
(ii)	Maximum number of lots in common developments or phases of a subdivision	N/A	N/A	5	N/A	5	N/A	N/A
(iii)	Background ground water nitrate (as N) concentration (mg/L) <sup>(2)(7)</sup>	2	2	2	2	2	2	4
(iv)	Pressure distribution required for the absorption system	Yes	Yes	Yes	Yes	Yes	Yes	N/A
(v)	Soil profile has at least 6 feet of natural soil below absorption system that is fine sandy loam, loam, or finer <sup>(3)</sup>	Yes	N/A	N/A	N/A	N/A	N/A	N/A
(vi)	Soil profile has at least 6 feet of natural soil below absorption system that is medium sand,	N/A	Yes	Yes	N/A	Yes	Yes	N/A

	sandy loam, or finer (3)							
(vii)	Soil profile has at least 6 feet of natural soil below absorption system that is medium sand, sandy loam, or finer (3), or discharge is to an elevated sand mound	N/A	N/A	N/A	N/A	N/A	N/A	Yes
(viii)	Minimum depth below natural ground surface to limiting layer in soil profile (feet)	8	10	10	6	8	N/A	N/A
(ix)	Minimum depth below natural ground surface to bedrock and ground water (feet) (4)	N/A	N/A	50	N/A	N/A	N/A	N/A
(x)	Minimum distance from proposed subdivision boundary to any existing or approved wastewater treatment systems outside the subdivision boundaries (feet)	N/A	N/A	500	N/A	N/A	N/A	N/A
(xi)	Level 2 wastewater treatment system	N/A	N/A	N/A	Yes	Yes	N/A	N/A
(xii)	Maximum depth of absorption system below natural ground surface (inches) (5)	24	24	24	24	24	24	24

(xiii)	Gray water in waste segregation systems <sup>(6)</sup>	N/A	N/A	N/A	N/A	N/A	Yes	N/A
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FOOTNOTES

(1) "N/A" means not applicable for purposes of this rule. Requirements in all other applicable laws, rules, and circulars must be met.

(2) The reviewing authority may require multiple ground water samples over a specified time period to determine whether seasonal variation of ground water nitrate concentrations may affect compliance with this requirement.

(3) Soil profiles must be conducted in accordance with site evaluation requirements in Department Circular DEQ-4. Soils that contain 60% or more of a rock fragment (gravel, cobble, stone, or boulder) and are considered extremely gravelly, extremely cobbly, extremely stony or extremely bouldery as defined in Appendix B of Department Circular DEQ-4 will not meet this requirement. All soil profiles for a wastewater treatment system absorption system must meet these soil requirements. The six foot thickness of the specified soil type may be a continuous soil layer or a combination of multiple layers.

(4) Depth below ground surface to ground water and bedrock can be determined using local well logs or other applicable information as approved by the reviewing authority.

(5) For depths shallower than 24 inches, absorption systems must meet the requirements in Department Circular DEQ-4 for shallow-capped absorption systems.

(6) Category only applies to the gray water discharge. It does not include a blackwater discharge or an alternate system required by Department Circular DEQ-4 that treats gray water and other wastewater from the lot.

(5) A 100-foot provisional mixing zone is required for each wastewater treatment system approved as nonsignificant under this rule. Source specific provisional mixing zones are not allowed. Provisional mixing zones are subject to the same setbacks and siting requirements as mixing zones but are not subject to the requirements of ARM 17.30.715.

(6) The department may require that on-site information be provided to verify any of the criteria required in this rule.

(7) The department may determine that lots within a specific geographic area do not meet the nonsignificance criteria in (2), and those lots must be reviewed pursuant to ARM 17.30.715. This determination must be based upon information submitted in a petition demonstrating that the nonsignificance criteria in (2) should not apply within that area.

(a) A petition submitted under this rule may be considered only if it is submitted by a local governing body, a local department or board of health, a local water quality district, or by either 10% or 20, whichever is fewer, of the landowners (or persons with a contract interest in land) within the affected geographic area.

(b) A petition submitted under this rule must contain the following information:

(i) a legal description of the petition area, which is the geographic area within which the nonsignificance criteria in (2) would not apply;

(ii) a detailed description of the soils, geology, and hydrogeology of the area described in (6) (b) (i);

(iii) a current listing from a title insurance company of the names and addresses of all persons who either own or have a contract interest in land within the petition area; and

(iv) data from ground water samples taken from wells that withdraw water from the uppermost aquifer underlying the petition area or from wells that withdraw water from the uppermost aquifer underlying an area within the same or adjacent county with similar climatic, soil, geologic, and hydrogeologic conditions and a density of individual sewage systems similar to that allowed in (2)(b). The ground water data must demonstrate that one of the following conditions is met:

(A) nitrate as nitrogen concentrations exceed 5.0 mg/L in ground water samples from more than 25% of at least 30 wells that are not located within a standard mixing zone, as defined in ARM 17.30.517(1)(d)(ix), for a wastewater treatment system; or

(B) data from ground water samples collected at least three years apart from the same 15 wells indicate a statistically significant increase of greater than 1.0 mg/L in nitrate as nitrogen concentrations in the uppermost aquifer.

(c) Within 90 days after receipt of the information required in (6)(b), the department shall issue a preliminary decision as to whether the petitioner has satisfied the requirements in (6)(b), and describe the reasons for either granting or denying the petition. The preliminary decision must be mailed to the petitioner and to all landowners or persons with a contract interest in land within the petition area and must include the following information:

(i) a description of the petition area;

(ii) a summary of the basis for the preliminary decision including any modifications to the boundaries of the petition area;

(iii) a description of the procedures for public participation and of the opportunity to comment prior to the department's final decision on the petition;

(iv) the ending dates of the comment period and the address where comments will be received;

(v) procedures for requesting a hearing; and

(vi) the name, e-mail address, and telephone number of a person to contact for additional information.

(d) Within 60 days after the close of the public comment period, the department shall issue a final decision and provide written notice of its decision to the petitioner and to each person who submitted written comments. The final decision must set forth the department's reasons for granting or denying the petition and must include a response to all substantive comments received by the department during the public comment period or during any hearing.

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

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

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

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

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

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

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

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

### Reasonable Necessity Statement

House Bill 923 from the 2025 legislative session directed the department to amend this rule to allow review of a wastewater discharge without a background nitrogen sample where ground water is absent or at a great depth. To accomplish this, the bill directed the department to adopt specific language as a new subsection (8). Thus, the department proposes to amend the rule using that specific language.

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

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

In normal practice, reviewers often accept background samples from wells that are some distance from the proposed action if there are no wells on site. Generally, the reviewer will accept wells that are up to half a mile from the proposed site, and in some cases up to a mile if the applicant can provide evidence that the sampled well is in a similar hydrogeological setting and likely to be completed in the same

aquifer as that underlying the site. By establishing absence of wells in adjacent sections, any locations that could potentially be acceptable have been shown to be without wells. Using the section-based approach rather than a set radius allows applicants to easily search the GWIC database to a consistent area.

Subsection (b) proposes to use the same search area and sets out 300 feet as the defining limit of “great depth.”

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

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