EXHIBIT 1
DATE 2/20/07
HB 662

**Montana Department of**
**ENVIRONMENTAL QUALITY**

**Brian Schweitzer, Governor**

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# Testimony on House Bill 662

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The Department of Environmental Quality is providing testimony in support of this bill. The Department proposed this legislation to clean up the use of an existing exemption in the Sanitation in Subdivisions Act that will make use of the exemption easier and more consistent.

1. The remainder language as it currently is written states "The remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter".

2. The reference to the April 29, 1993 date in the current exemption comes directly from the Water Quality Act and the implementation of nondegradation. Any wastewater system in place before this date is not a new or increased source and is exempt from nondegradation regulations. The intent of placing this date in the subdivision exemption must have been for the same reason; any system in place prior to this date is exempt from review.

3. The main reason we proposed this legislation is currently this exemption is being interpreted in two different ways by State and local government. If a wastewater system was installed prior to April 29, 1993 but was replaced after that date some counties are granting the exemption since the system was "originally" installed prior to the date. Some counties and the State are interpreting that the exemption does not apply since installation of a replacement system means that the system was constructed after the April 29, 1993 date.

4. It is critical that this exemption is used the same way by all local governments and the State. These real examples point out why the exemption language needs to be corrected.

   - Example. A 320 acre farm in Eastern Montana with an existing home. The home had an old septic system that the owner replaced in 2006 and drilled a new well. The lot had the 100 year flood plain mapped after building the original home. This person was proposing selling the home on 2 acres and keeping the remainder of the farm. Because the septic was replaced in 2006 and was "constructed" after April 29, 1993 the applicant was unable to use the exemption and they ended up creating a 20 acre parcel to avoid DEQ subdivision review.

   - Example. Two side by side properties separated by the Northwest Montana line with pre 1993 systems that were replaced after that date. One county will not allow the use of the remainder exemption and the other county will.