



## Montana Legislative Services Division

### Legal Services Office

---

**TO:** Environmental Quality Council  
**FROM:** Helen Thigpen  
**DATE:** September 1, 2011  
**RE:** Legislative Administrative Rule Review Report

---

Pursuant to 75-1-324 and 5-5-215, MCA, the Environmental Quality Council is responsible for reviewing administrative rules within its jurisdiction. Staff for the Environmental Quality Council has prepared this report for informational purposes only. This report does not represent any action or opinion of the Environmental Quality Council and does not preclude additional action that may be taken by the Environmental Quality Council pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

**MAR NOTICE NUMBER:**

17-327

**AGENCY/BOARD:**

Department of Environmental Quality

**RULE CLASSIFICATION:** (e.g. substantive/interpretative/emergency/temporary)

Substantive

**SUBJECT:**

Subdivisions/On-Site Subsurface Wastewater Treatment

**NOTICE DESCRIPTION:** (e.g. proposal notice/adoption notice)

Notice of public hearing on proposed amendment

**SUMMARY OF RULE(S):**

The Department of Environmental Quality (DEQ) is proposing to adopt rules implementing HB 28 and SB 89. HB 28 amends section 76-4-104, MCA, to require mixing zones to be located wholly within the boundaries of the proposed subdivision where the drainfield is located or on an adjoining right-of-way unless an easement or authorization to place the drainfield outside the boundaries of the subdivision has been obtained from the landowner. SB 89 reduces the time for review of subdivision applications, requires DEQ to notify applicants if an application does not contain evidence of certification from the local health department or approval from the local

governing body, if applicable, and revises certain procedures for reviewing subdivision applications.

To implement HB 28 and SB 89, DEQ is proposing to amend its rules pertaining to subdivision applications, review procedures, requirements for local compliance, certificates of approval, local department or board of health certification, and sewage system siting.

The proposed rules require applications not subject to review by a local reviewing authority to include a certification from the local health officer that the design for nonpublic water supply and wastewater disposal facilities complies with applicable local laws and regulations. A copy or summary of any public comments on preliminary sanitation information collected as provided in section 76-3-604(7), MCA, is also required. SB 89 requires DEQ to notify subdivision applicants within 5 days of receipt of an application if the application does not include the certification of compliance signed by the local health officer, an approval from the local governing body, if applicable, or public comments or summaries of public comments, if applicable.

The proposed rules also: (1) reflect that DEQ must take final action on the application within 10 days of receiving the recommendation of the local reviewing authority; (2) require DEQ to notify applicants of a denial within 45 days instead of 50 days after receipt of the application; (3) provide that if additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review the resubmitted application within 30 days after its receipt; and (4) require DEQ to make a final decision on a resubmitted application within 10 days if a the review is conducted by a local department or board of health.

The proposed rules also delete references to solid waste and storm water facilities because, according to DEQ, these facilities are not included in 76-4-104(6)(j), MCA (now 76-4-104(6)(k), MCA, as result of a composite section). The proposal also deletes an exemption for facilities with MPDES permits. With respect to local compliance, the proposed amendments delete the requirement that DEQ include in conditions of approval in its certificate of subdivision approval. DEQ states that is has the authority to deny a subdivision application if the subdivision does not comply with local laws and regulations, but it does not have the authority to enforce other local conditions.

The proposed rules also incorporate the requirements from SB 28 regarding the location of drainfield mixing zones into DEQ's sewage system siting rules.

This is summary of the proposed amendments to DEQ's subdivision rules. There may be additional changes not referenced in this document. Please see the proposal notice for additional information.

**NOTES:** (e.g. hearing dates)

A hearing is scheduled on the above referenced rules on September 14, 2011, at 2 p.m. in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

CI0070 1245HHEA.docx