



December 17, 2019

To: Chair MacDonald, Local Government Interim Committee

From: Tim Davis, Administrator, Water Quality Division

RE: Clarification of DEQ's Current Process of Approving New, Innovative, or Experimental On-Site Wastewater Treatment Systems

Dear Chair McDonald:

I am writing to answer questions that the LGIC has raised about how DEQ approves deviations or waivers for new, innovative, or experimental on-site wastewater treatment systems. There are currently several ways that DEQ approves new, experimental, and innovative systems including through deviations, waivers, and updates to both Administrative Rules of Montana (ARM) and Design Circulars.

Let me start by explaining what deviations and waivers are - Waivers are exceptions requested from ARM, which are considered on a case-by-case basis. Waivers from the Administrative Rules are specifically outlined in the rule. For example, a waiver can be sought for the well construction rules for existing systems, but not for newly proposed wells. Deviations are exceptions requested from Design Circulars, which are also considered on a case by case basis. A deviation can be requested from any of the Design Standards for both new or replacement systems.

DEQ and contracted counties receive hundreds of deviation or waiver requests per year. The vast majority of those deviation and waiver requests are approved. In fiscal year 2019, DEQ and contracted counties reviewed 294 deviations or waivers. Recently, DEQ reviewed the deviation and waiver requests submitted from September 1 to November 15, 2019 in order to get a rough estimate of the approval ratio. Of the 83 requests submitted, 70 were approved, or approximately 84% were approved. We believe the overall Subdivision approval ratio of deviations and waivers would generally be similar.

The most common wastewater-related waivers that DEQ receives relate to the number of test pits required for a subdivision and setbacks between existing wastewater systems and other on-site surface water or storm water features.

The amount of work that needs to go into applying for a deviation or a waiver varies greatly from a simple (i.e. a request to reduce the number of test pits excavated on-site for a proposed subdivision because the site soils are shown to be very consistent.) to a very complex (i.e. deviations from groundwater monitoring criteria, which involves significant hydrologic analysis to determine the worst case groundwater level, if monitoring was not completed or the procedure did not precisely follow Circular DEQ-4 procedures). DEQ will generally process a deviation request as part of their regular subdivision review within the existing statutory deadlines. If a consultant wants to know if a deviation will be approved prior to submitting the entire subdivision application

then we generally process those deviations in on average one week or so. Deviations and waivers cost \$200 to review.

If an engineer or an owner would like to propose a new, innovative, or experimental system not specifically listed in Circular DEQ-4, they may request a waiver to allow the use of experimental systems. Experimental systems have the following requirements, as outlined in Circular DEQ-4 Section 8.6:

1. The system must effectively treat wastewater to prevent groundwater contamination;
2. The system must be monitored and inspected quarterly;
3. The person selling property with an experimental system must disclose monitoring and maintenance requirements to the buyer; and
4. Continuous maintenance and operation must be provided for the life of the system.

Additionally, an engineer or owner may request a deviation from DEQ's design standards. A written deviation from a standard is submitted to the reviewing authority. It must contain the following information:

1. Identify the specific section of the design standards for which the deviation is requested;
2. Include adequate justification for the deviation with supporting data;
3. Address how the system allowed by the deviation would be unlikely to cause pollution of state waters in violation of 75-5-605, MCA;
4. Address that granting the deviation would protect the quality and potability of water for public water supplies and domestic uses and would protect the quality of water for other beneficial uses, including those specified in 76-4-101, MCA; and
5. Address that granting the deviation would not adversely affect public health, safety and welfare. The reviewing authority having jurisdiction will review the request and make final determination on whether a deviation may be granted.

Once DEQ has approved a deviation or waiver of a type of system or technology then, in some cases, future deviation or waiver requests for those types of systems may become easier and simpler to approve. When revising the Circular 4 design standards, approximately every five years, DEQ often adds additional types of systems that have proven popular and successful. In order for a type of system to be considered standard and listed in Circular 4, adequate research must be compiled and tests completed that prove a system is able to perform successfully in Montana. We are currently considering which additional systems to add through our comprehensive rule making effort.

Please let me know if you or the Committee members have any other questions.

Respectfully,



Tim Davis, Administrator
Water Quality Division
Department of Environmental Quality