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Local Government Interim Committee
66th Montana Legislature

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August 29, 2019

TO: Local Government Interim Committee (LGIC) Members
FROM: Toni Henneman, LGIC staff

Committee members,

The Subdivision Advisory Council (SDAC) met on August 29th. The meeting materials sent to the Subdivision Advisory Council have been included in your packet, and you will receive a summary update of the council's actions at the September meeting.

The first document includes the results of a survey the Subdivision Advisory Council conducted from June 10, 2019 to July 1, 2019. The impetus of the survey was to collect feedback for the comprehensive subdivision rule update currently underway by the Department of Environmental Quality. The survey was sent electronically to the SDAC's interested party list, SDAC members, and contracted counties, which resulted in hundreds of people surveyed.

The survey asked four questions:

1. Are there any areas covered by existing subdivision regulation that do not enhance environmental or public health protections and should be eliminated or reduced? If so, please identify those areas.
2. Are there areas where more stringent subdivision regulations are needed to enhance environmental or public health protections? If so, please identify those areas.
3. Are there any other issues you would like us (the Department of Environmental Quality) to consider during this rule update? If so, please identify those issues.
4. Are there regulations that you feel are unclear, difficult to interpret, or that have been interpreted inconsistently over time? If so, please identify those regulations.

The survey results include the general answers to these questions and more detailed responses grouped by topic.

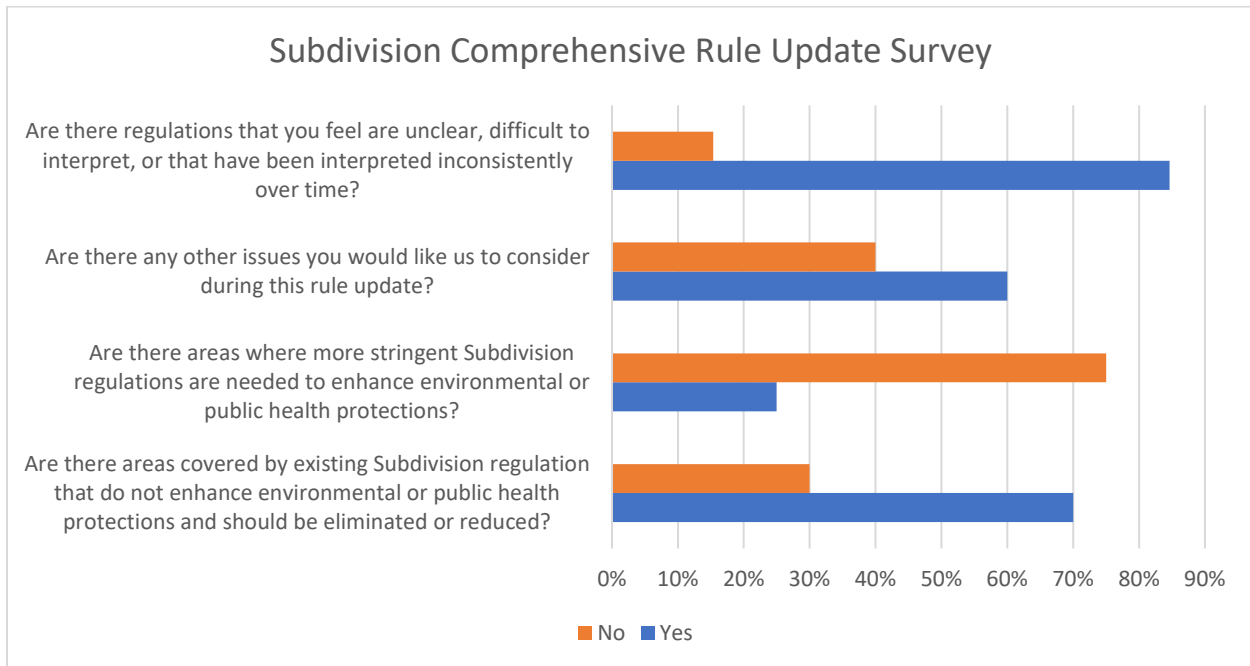
Also included in your packet is the calendar for DEQ rule adoption related to subdivision review and public notice for the upcoming public hearing on September 16, 2019.

If you have any questions or concerns let me know.

Toni Henneman
406-444-3593

Subdivision Comprehensive Rule Update Survey

Responses:



Narrative Responses by Topic:

Procedure

1. DEQ should not be able to give new comments in the second or third round.
2. DEQ should not enforce the rules literally when they have been “waived” in the past.
3. Aggregations should only require a one-page form if they use one of the already approved well and drainfield.
4. Encourage more connections to public systems.
5. Criteria for the waiver to not connect to public systems should be clarified. Also, who can submit the cost analysis, the designer or the public system engineer?
6. If the applicant meets the 3:1 criteria for not connecting to public systems, no waiver should be required.
7. The “no facilities” exclusion has a lot of room for evasion and harms the subsequent land buyer if facilities are not approvable or only approvable with additional treatment.
8. If a file has been inactive for more than a year, additional review fees may be required.
9. The DNRC letter should not be required when moving a well or when adding a bathroom in a shop.
10. Rules regarding covenants between DEQ and a property owner should be adopted so fewer easements are required.
11. Eliminate the hourly review fee.
12. Remove all requirements for contour maps – USGS topo map should suffice.
13. Clarify which types of systems need a design, plans and specifications.
14. Add a definition of “proposed subdivision” for the purposes of applying 76-4-104 (6)(k).

15. The location of existing and proposed utilities should not be required where they do not impact wells, drainfields or storm drain systems.

Water systems

1. No waiver should be required when a well met the grouting standards in effect when it was constructed.
2. Do not require a description of the proposed groundwater source – nearby well logs should be adequate.
3. Only sources of contamination within 100' of individual and shared wells need to be shown.
4. The PWS-6 report should not be required for multiple user systems.
5. Public water wells should not be required to be approved and tested for water quality and quantity prior to COSA approval.
6. Develop waiver/deviation criteria for when a well isolation zone can exit the subdivision boundaries.
7. Expand DEQ-3 to cover individual and shared wells.
8. Existing surface water sources should be grandfathered.

Wastewater systems (many of these would also carry over to the 900-series local health rules)

1. There were numerous technical issues with Circular DEQ-4 which have been forwarded to the staff rewriting this document. We can give a summary at the next meeting if desired. The items below are changes are substantive or procedural changes for reviewing wastewater systems.
1. Pressure dosing should be required for all soil 0.6 gpd/sf or faster.
2. Cut systems should be allowed for new drainfields.
3. The four-foot separation to a limiting layer should not be required for lined systems.
4. Absorption beds should be allowed for new systems.
5. Holding tanks should be allowed for new systems in some circumstances like a cabin.
6. A separate test pit for each pressure zone should be eliminated for small (< 2,500 gpd) drainfields.
7. Three test pits should not be required for all public systems, it should be based on design flow.
8. One test pit within 25 feet of two drainfields should be allowed.
9. Remove the requirement that drainfields must be designed and installed in accordance with Circular DEQ-4.
10. Standard reductions for NSF 40 systems and use of infiltrators should be allowed for replacement systems.
11. Four feet of any soil between the infiltrative surface and a limiting layer should be allowed, i.e. it doesn't have to be "natural" soil.
12. Design of wastewater systems should be done at the time of permitting. No design should be required at the time a COSA application is submitted.
13. The required amount of staking should be clarified.
14. ESMs should not require an O&M manual. They are not much more complicated than a drainfield.
15. Develop waiver/deviation criteria for when a mixing zone can exit the subdivision boundaries.

Storm Water systems

1. There were numerous technical issues with Circular DEQ-8 which have been forwarded to the staff rewriting this document – we can give a summary at the next meeting if desired. The items below are changes to the procedure for reviewing storm water.
2. PE design should not be required for all commercial stormwater systems (note that PE design is not required for all commercial system, only those with > 25% impervious surface).
3. Storm water plans should not expire after three years except for portions of the storm water facilities that are common to the development “community storm water.”
4. Re-writes should not be required when the only thing changing is more impervious area, e.g. adding a barn with bathroom to a previously approved lot.
5. Storm drain plans can be part of the lot layout and a separate plan should not be required.
6. The total required landscape area should just be shown on the lot layout with a footnote, rather than designate a specific area.

Local Health Rules/Interaction

1. Sewer lines and piping should be removed from the definition of “sealed components.”
2. Variances/waivers should not require approval from both local health and DEQ.
3. Preliminary site assessments by the local health department should be mandatory.
4. The requirement to connect to a public system rule should match the 300-series rule at 500’.
5. The 900-series rules should more closely match the 300-series rules.

Comments outside the scope of this rulemaking:

1. Floodplain permitting and SWPPP permitting should be changed. (No information was provided on how they should be changed).
2. Many comments were submitted regarding nondegradation. These comments will be forwarded to the Nondeg Work Group for consideration in the Nondeg rule update.
3. The well drillers rules should be changed back to 18’ of grout.

Comments that will likely require statutory changes

1. Require storm water review and approval under the Platting Act instead of the Sanitation Act, particularly for individual storm water ponds.
2. Expand the “municipal facilities exclusion” to all public systems, not just municipalities and County WSD.
3. Review timeframes should be much shorter than 30 and 55 days.
4. Developers should not be required to pay a review fee to DEQ and a septic permit fee to the County.
5. Buildings, driveways, water service lines, sewer service lines and storm water ponds should not be shown on the lot layout. (note that there may be other ways to show this information like an approved “area” that would not necessarily require a statutory change).
6. Local Health Department review of wastewater systems should be limited to those that are not subject to review under MCA 75-6 and 76-4.
7. All aggregations and boundary line adjustments should be exempt from review.
8. Storm water review should not be required for lots exempt from the Platting Act.
9. Storm water on a developed but not previously approved parcel should not require review.

10. Parcels that were not eligible for an exemption at the time they were recorded but are eligible for an exemption now should not require review.
11. Boundary line adjustments for parcels that should have triggered review at the time they were recorded/constructed but did not get a COSA should continue to be exempt from review.
12. Certificates of Subdivision Approval should expire if not constructed within a certain period of time like public water and wastewater facilities.
13. Is there a better way to handle lots with Sanitary Restrictions prior to 1973? (note that this may or may not require a statutory change depending on the solution).
14. If the local health authority has been contacted but they do not respond within 30 days, local health approval should not be required.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING
ARM 17.36.802 and 17.38.106)	ON PROPOSED AMENDMENT
pertaining to subdivision and public)	AND ADOPTION
water and wastewater review fees,)	
and New Rule I pertaining to)	(SUBDIVISIONS)
certification under 76-4-127, MCA)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On September 16, 2019, at 10:00 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer, Legal Secretary, no later than 5:00 p.m., September 9, 2019, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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	\$ 125.00 <u>175.00</u>
(ii) condominium/ townhouse /trailer court/recreational camping vehicle campground unit or space	\$ 50.00 <u>70.00</u>
(iii) resubmittal fee - previously approved lot, boundaries are not changed per lot or parcel	\$ 75.00 <u>100.00</u>
(b) type of water system:	
(i) individual or shared water supply system (existing and proposed) per unit	\$ 85.00 <u>120.00</u>
(ii) multiple-user system (non-public):	
(A) - each new system	\$ 315.00 <u>440.00</u> (plus \$ 105.00 <u>150.00</u> / hour for review in excess

	of four hours)
(B) - new distribution system design per lineal foot	\$ 0.25 <u>0.50</u>
(C) - connection to distribution system per lot or unit	\$ 70.00 <u>100.00</u>
(iii) public water system:	
(A) new system per component	per ARM 17.38.106 fee schedule
(B) new distribution system design per lineal foot	\$ 0.25
(C) connection to distribution system per lot or structure	\$ 70.00
(c) type of wastewater disposal:	
(i) existing systems per unit	\$ 75.00 <u>105.00</u>
(ii) new gravity fed system per drainfield	\$ 95.00 <u>130.00</u>
(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	\$ 190.00 <u>250.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(B) per drainfield	\$ 50.00 <u>70.00</u>
(iv) gray water reuse systems, holding tanks, sealed pit privies, unsealed pit privies, seepage pits, waste segregation, experimental systems	\$ 95.00 <u>130.00</u> (plus \$ 405.00 <u>150.00</u> / hour in excess of two hours)
(v) multiple-user wastewater system (non-public):	
(A) - new collection system design per lineal foot	\$ 0.25 <u>0.35</u>
(B) - connection to collection system per lot or unit	\$ 70.00 <u>100.00</u>
(vi) new public wastewater system per component	per ARM 17.38.106 fee schedule
(A) new collection system design per lineal foot	\$ 0.25
(B) connection to collection system per lot or structure	\$ 70.00
(d) other:	
(i) deviation from circular per request or design	\$ 200.00 <u>300.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(ii) waiver from rule per request	\$ 200.00 <u>300.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(iii) reissuance of original approval statement per request	\$ 60.00 <u>90.00</u>

(iv) review of revised lot layout document per request	\$ 425.00 <u>175.00</u>
(v) municipal facilities exemption checklist (former master plan exemption) per application	\$ 400.00 <u>150.00</u>
(vi) nonsignificance determinations/categorical exemption reviews:	
(A) - individual/shared systems per drainfield	\$ 60.00 <u>90.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(B) - multiple-user non-public systems per lot or structure	\$ 30.00 <u>45.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of two hours)
(C) - source specific mixing zone per drainfield	\$ 200.00 <u>275.00</u>
(D) - public systems per drainfield	per ARM 17.38.106 fee schedule
(vii) storm drainage plan review:	
(A) - plans exempt from Circular DEQ-8 <u>simple plan review</u> per lot project	\$ 40.00 <u>150.00</u>
(B) - plans subject to Circular DEQ-8 <u>standard plan</u> review:	
(I) per design project	\$ 180.00 <u>250.00</u>
(II) <u>plus</u> per lot	\$ 40.00 <u>60.00</u> (plus \$ 405.00 <u>150.00</u> / hour for review in excess of 30 minutes per lot)
(viii) preparation of environmental assessments/environmental impact statements:	actual cost-
(ix) <u>review for compliance with ARM 17.30.718</u>	\$ <u>900.00</u> (plus \$ <u>150</u> / hour for review in excess of <u>6 hours</u>).

AUTH: 76-4-105, MCA
IMP: 76-4-105, MCA

REASON: The department is proposing to increase subdivision fees to cover actual costs for reviewing plats and subdivisions, conducting inspections, and conducting enforcement activities. The last major change to the subdivision fees was in 2013. Previous fiscal year expenses and revenue were the following:

FY 17 Revenue \$ 826,213.53	Expenses \$ 921,385.02	Difference \$ -95,171.49
FY 18 Revenue \$ 955,232.33	Expenses \$ 971,050.56	Difference \$ -15,818.23

Average expenses exceeded average revenue by approximately 7 percent over the past two fiscal years. Expenses to the department grew by over 5 percent between FY 17 and FY 18. Assuming a conservative average increase in expenses of 2 percent per year, the department projects that fees will need to be increased by 40 percent to cover the department's actual costs through 2027. The department has projected expenses through this date to allow the department and contracted counties to budget and plan for future needs and to provide long-term predictability for the regulated community. The proposed fee increase used an average 40 percent increase per component, to the next five or ten cent or dollar increment. Approximately 800 subdivision files per year will be impacted by this fee increase, resulting in an approximate cumulative increase of \$382,093 per year. The department consulted with a broad representation of stakeholders, including developers, consultants, engineers, and others in the regulated community, and has received no negative feedback regarding these proposed fee increases.

In addition to this general increase in fees, the department is proposing to make the following other amendments to ARM 17.36.802.

The department is proposing to amend (1)(a)(i) and (ii) so that townhouse applications will be subject to the same fees as subdivision lots. Townhouses create new lots that take as much time to review as other subdivision lots, and the fees should reflect the time incurred in reviewing them. Together with the general fee increase discussed above, this change will result in an increased fee of \$125 for each townhouse. The department does not maintain separate data for townhouse applications, and each application contains a different number of townhouses. Nevertheless, the department estimates that it receives approximately twenty townhouse applications per year, with each project generally containing ten to twenty townhouses.

The department is proposing to delete (1)(b)(iii)(B) and (C) and (1)(c)(vi)(A) and (B), which are duplicative of (1)(b)(iii)(A) and (1)(c)(vi). This amendment will have no impact on fees; it will merely delete the duplicative rule sections.

The department is proposing to update the terminology in (1)(d)(vii)(A) and (B) to refer to "simple" and "standard" storm water plans instead of "exempt" and "non-exempt" plans. This is necessary to conform the rule language with the 2018 edition of Department Circular DEQ-8. Instead of applying the general 40 percent fee increase discussed above, the department is proposing to increase fees for simple plans from \$40 to \$150, but on a per-project basis instead of a per-lot basis. This is necessary because simple plans take a minimum of one hour of review time. Approximately 1/3 of all subdivision applications include simple storm water plans, or approximately 266 files per year. This will result in a cumulative increase of approximately \$29,620 per year. The department is proposing to amend (1)(d)(vii)(B)(I) to refer to the "project" instead of the "design" and to amend (1)(d)(vii)(B)(II) to say "plus per lot," both which are necessary to clarify the language in the fee.

The department is proposing that applicants pay to cover the costs of the department's review to classify a subsurface wastewater treatment system as level 1a, level 1b, or level 2 under ARM 17.30.718. This review takes approximately six hours of staff time. This new fee is necessary to cover the costs of this review because currently applicants pay no fee for this review. The department receives

approximately three of these applications per year.

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	\$ 700 <u>1,000</u>
point-of-use/point-of-entry treatment	\$ 700 <u>1,000</u>
Section 1.0 Engineering Report	\$ 280 <u>400</u>
Section 3.1 Surface water	
quality and quantity	\$ 700 <u>1,000</u>
structures	\$ 700 <u>1,000</u>
Section 3.2 Ground water	\$ 840 <u>1,200</u>
Section 4.1 Microscreening	\$ 280 <u>400</u>
Section 4.2 Clarification	
standard clarification	\$ 700 <u>1,000</u>
solid contact units	\$ 1,400 <u>2,000</u>
Section 4.3 Filtration	
rapid rate	\$ 1,750 <u>2,500</u>
pressure filtration	\$ 1,400 <u>2,000</u>
diatomaceous earth	\$ 1,400 <u>2,000</u>
slow sand	\$ 1,400 <u>2,000</u>
direct filtration	\$ 1,400 <u>2,000</u>
biologically active filtration	\$ 1,400 <u>2,000</u>
membrane filtration	\$ 1,400 <u>2,000</u>
micro and ultra filtration	\$ 1,400 <u>2,000</u>
bag and cartridge filtration	\$ 420 <u>600</u>
Section 4.4 Disinfection	\$ 700 <u>1,000</u>
Section 4.5 Softening	\$ 700 <u>1,000</u>
Section 4.6 Ion Exchange	\$ 700 <u>1,000</u>
Section 4.7 Aeration	
natural draft	\$ 280 <u>400</u>
forced draft	\$ 280 <u>400</u>
spray/pressure	\$ 280 <u>400</u>
packed tower	\$ 700 <u>1,000</u>
Section 4.8 Iron and manganese	\$ 700 <u>1,000</u>
Section 4.9 Fluoridation	\$ 700 <u>1,000</u>
Section 4.10 Stabilization	\$ 420 <u>600</u>
Section 4.11 Taste and odor control	\$ 560 <u>800</u>
Section 4.12 Adsorptive media	\$ 700 <u>1,000</u>

Chapter 5 Chemical application	\$ 980 <u>1,400</u>
Chapter 6 Pumping facilities	\$ 980 <u>1,400</u>
Section 7.1 Plant storage	\$ 980 <u>1,400</u>
Section 7.2 Hydropneumatic tanks	\$ 420 <u>600</u>
Section 7.3 Distribution storage	\$ 980 <u>1,400</u>
Chapter 8 Distribution system	
per lot fee	\$ 70 <u>100</u>
non-standard specifications	\$ 420 <u>600</u>
transmission distribution (per lineal foot)	\$ 0.25 <u>0.35</u>
rural distribution system (per lineal foot)	\$ 0.03 <u>0.04</u>
sliplining existing mains (per lineal foot)	\$ 0.15 <u>0.20</u>
Chapter 9 Waste disposal	\$ 700 <u>1,000</u>
Appendix A	
new systems	\$ 280 <u>400</u>
modifications	\$ 140 <u>200</u>

(b) The fee schedule for designs requiring review for compliance with Department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans	
engineering reports (minor)	\$ 280 <u>400</u>
comprehensive facility plan (major)	\$ 1,400 <u>2,000</u>
Chapter 30 Design of sewers	
per lot fee	\$ 70 <u>100</u>
non-standard specifications	\$ 420 <u>600</u>
collection system (per lineal foot)	\$ 0.25 <u>0.35</u>
sliplining existing mains (per lineal foot)	\$ 0.15 <u>0.20</u>
Chapter 40 Sewage pumping station	
force mains (per lineal foot)	\$ 0.25 <u>0.35</u>
1000 gpm or less	\$ 700 <u>1,000</u>
greater than 1000 gpm	\$ 1,400 <u>2,000</u>
Chapter 60 Screening grit removal	
screening devices and comminutors	\$ 420 <u>600</u>
grit removal	\$ 420 <u>600</u>
flow equalization	\$ 700 <u>1,000</u>
Chapter 70 Settling	\$ 1,120 <u>1,500</u>
Chapter 80 Sludge handling	\$ 2,240 <u>3,000</u>
Chapter 90 Biological treatment	\$ 3,360 <u>4,700</u>
nonaerated treatment ponds	\$ 1,120 <u>1,500</u>
aerated treatment ponds	\$ 1,960 <u>2,800</u>
Chapter 100 Disinfection	\$ 900 <u>1,200</u>
Chapter 120 Irrigation and Rapid Infiltration Systems	\$ 980 <u>1,400</u>
Appendices A and C (per design)	\$ 980 <u>1,400</u>

(c) The fee schedule for designs requiring review for compliance with

Department Circular DEQ-3 is set forth in Schedule III, as follows:

SCHEDULE III

Section 3.2 Ground water	\$ 840 <u>1,200</u>
Chapter 6 Pump facilities	\$ 420 <u>600</u>
Chapter 7 Finished storage/hydropneumatic tanks	\$ 420 <u>600</u>
Chapter 8 Distribution system	\$ 420 <u>600</u>

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	\$ 280 <u>400</u>
Chapter 5 Septic Tanks	\$ 280 <u>400</u>
Chapter 6 Soil Absorption Systems	\$ 280 <u>400</u>
Chapter 6, Subchapter 6.8 ETA and ET Systems	\$ 700 <u>1,000</u>
Chapter 7, Subchapters 7.1, 7.2, and 7.3 Filters	\$ 280 <u>400</u>
Chapter 7, Subchapter 7.4 Aerobic Treatment	\$ 700 <u>1,000</u>
Chapter 7, Subchapter 7.5 Chemical Nutrient-Reduction Systems	\$ 700 <u>1,000</u>
Chapter 7, Subchapter 7.6 Alternate Advanced Treatment Systems	\$ 700 <u>1,000</u>
Chapter 8 Holding Tanks, Pit Privy, Seepage Pits, Waste Segregation, Experimental Systems	\$ 280 <u>400</u>
Appendix D	\$ 280 <u>400</u>
Non-degradation Review	\$ 420 <u>600</u>

(e) The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:

SCHEDULE V

Spring box and collection lateral	\$ 350 <u>500</u>
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(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI

Cisterns	\$ 420 <u>600</u>
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(3) Fees for review of plans and specifications not covered under (2) are established by the department based on a charge of \$~~405~~ 150 per hour multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications will be determined by the review engineer and documented with time sheets.

(4) The fee for review of plans and specifications previously denied, for staff

time over two hours, is \$~~405~~ 150 per hour, assessed in half-hour increments, multiplied by the time required to review the plans and specifications. The review time applied to each set of plans and specifications must be determined by the review engineer and documented with time sheets.

(5) The fee for review of deviations is \$~~200~~ 300 per deviation.

(6) and (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The board is proposing to amend ARM 17.38.106 to increase fees for department review of plans and specifications of public water supply and public wastewater systems. Such increases are necessary to cover department costs in conducting such reviews. The last major change to these fees was in 2010. Previous fiscal year expenses and revenue were the following:

FY 17 Revenue \$ 470,097.73	Expenses \$ 498,450.95	Difference \$ -28,353.22
FY 18 Revenue \$ 606,894.58	Expenses \$ 659,109.63	Difference \$ -52,215.05

Average expenses exceeded average revenue by approximately 7 percent over the past two fiscal years. Assuming a conservative average increase in expenses of 2 percent per year, the Public Water and Wastewater Engineering Review program projects that fees will need to be increased by 40 percent to cover the department's actual costs through 2027. Using this time frame allows the department to budget and plan for future needs and provides long-term predictability for the regulated community. The proposed fee increase used an average 40 percent increase per component, to the next five or ten cent or dollar increment. Approximately 400 public water and wastewater applications per year will be affected by these fee increases, resulting in a cumulative increase of approximately \$242,758 per year. The department consulted with a broad representation of stakeholders, including developers, consultants, engineers, and others in the regulated community, and has received no negative feedback regarding these proposed fee increases.

4. The proposed new rule provides as follows:

NEW RULE I 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) is within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA;

(d) has an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities; and

(e) 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.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, 76-4-127, MCA

REASON: Under 76-4-125 and 76-4-127, MCA, a subdivision may be exempt from department review if a certifying authority certifies that the subdivision will have adequate storm water drainage and that the subdivision will be served by adequate water and wastewater facilities. Before 2019, this exemption was available to a subdivider only if the governing body of certain municipalities certified that the subdivision would be served by adequate municipal facilities. In 2019, the Legislature enacted HB 55, which, among other things, expanded the exemption to include county water and/or sewer districts and removed the statutory eligibility criteria for municipalities. HB 55 directed the department to adopt eligibility requirements for municipalities and county water and/or sewer districts to qualify as a certifying authority under 76-4-127, MCA.

The department proposes New Rule I to comply with HB 55. Section (1) of New Rule I provides the eligibility requirements for county water and/or sewer districts, while (2) provides the eligibility requirements for municipalities.

Sections (1)(a) and (1)(b) require county water and/or sewer districts to be incorporated under Title 7, chapter 13, MCA, and to be in compliance with Title 75, chapters 5 and 6, MCA. These requirements are necessary to be consistent with the statutory definition of "adequate county water and/or sewer district facilities" in 76-4-102, MCA.

Section (1)(c) requires the county water and/or sewer district to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA. This requirement ensures that county water and sewer districts have planned for future development and have already evaluated their water, wastewater, and storm water needs, making additional oversight by the department unnecessary.

Section (1)(d) requires the county water and/or sewer district to have an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities. Because the exemption will allow a subdivision to avoid department subdivision review, professional engineering certification is necessary to ensure that the county water and/or sewer district is familiar with department minimum design standards for those facilities.

Section (1)(e) requires the county water and/or sewer district to have a utility master plan approved by the department within the past ten years that addresses capacity of the water and wastewater system to serve additional development in compliance with department design circulars. A utility master plan is a planning and engineering tool that provides a road map to ensure that water and wastewater

facilities can reliably and efficiently serve the current and future needs of the county water and/or sewer district. The plan must include current demands on the facilities, proposed future demands, and an evaluation of the facilities' capacity to serve future additional demands when using this exemption.

The department considered adopting a minimum population threshold as the basis for determining county water and/or sewer district eligibility. The department rejected this approach because a population threshold would eliminate some smaller districts that have adequately planned for future utility service while allowing other districts that may not have done so.

Section (2)(a) requires municipalities to be in compliance with Title 75, chapters 5 and 6, MCA. This requirement is necessary to be consistent with the statutory definition of "adequate municipal facilities" in 76-4-102, MCA.

Section (2)(b) requires municipalities to be a first or second class municipality or to be within a jurisdictional area covered by a growth policy pursuant to Title 76, chapter 1, MCA, in order to be a certifying authority. First and second class municipalities generally have adequately planned for future development, making additional department oversight unnecessary. Municipalities with a growth policy also have planned for future development, including their water, wastewater, and storm water facility needs, making additional oversight by the department unnecessary.

Section (2)(c) requires a municipality to have an on-staff or retained professional engineer to certify compliance with department design standards for water, wastewater, and storm water facilities. Because the exemption will allow a subdivision to avoid department subdivision review, professional engineering certification is reasonably necessary to ensure that the municipality is familiar with department minimum design standards regarding water, wastewater, and storm water facilities.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m. September 20, 2019. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail

unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the board or department.

7. Sarah Clerget, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

8. The bill sponsor contact requirements of 2-4-302, MCA, does apply. The sponsor was notified via regular mail on May 29, 2019.

9. With regard to the requirements of 2-4-111, MCA, the board and the department have determined that the amendment and adoption of the above-referenced rules will significantly and directly impact small businesses.

10. These rules will become effective January 1, 2020.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes
EDWARD HAYES
Rule Reviewer

BY: /s/ Christine Deveny
CHRISTINE DEVENY
Chair

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Shaun McGrath
SHAUN McGRATH
Director

Certified to the Secretary of State, August 13, 2019.