



October 24, 2019

The Honorable Margie MacDonald, Chair  
Local Government Interim Committee  
P.O. Box 201704  
Helena, MT 59620-1074

RE: Information on failing drainfields and as-builts

Dear Committee Members:

In response to questions raised during your last Local Government Interim Committee meeting, I am pleased to offer the following information.

**1 Authority to compel or encourage people to repair or replace existing failing drainfields**

The Department of Environmental Quality (DEQ) and Local Boards of Health have the following statutory authority to require correction if a person is causing pollution or other conditions that impact public health or the environment. Those statutes are listed below.

**1.1 Public Water and Wastewater Laws**

*MCA 75-6-104. Duties of department. The department shall: upon its own initiative or complaint to the department, to the mayor or health officer of a municipality, or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply system and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;*

**1.2 Water Quality Act**

*MCA 75-5-103 (30)(a) "Pollution" means: (i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.*

*MCA 75-5-601. Cleanup orders. (1) The department may issue an order to a person to clean up any material that the person or the person's employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and*

that may pollute state waters. (2) If a unit of state or local government, including but not limited to a local board of health, county commission, governing body of a municipality, or state agency, has granted a permit or license to a person to discharge waste or has otherwise authorized an activity that involves the placement of waste and the department has reason to believe that the waste is causing or is likely to cause pollution of state waters, the department may issue an order to the unit of state or local government to take measures to ensure that the wastes causing or likely to cause the pollution are cleaned up. (3) The department may include in an order issued to a county commission pursuant to subsection (2) a request that the commission create a sewer district in the geographic area affected by the order for the purpose of establishing a public sewer system in accordance with the petition and election procedures provided by 7-13-2204 and 7-13-2208 through 7-13-2214.

**MCA 75-5-605. Prohibited activity -- exemption.** (1) It is unlawful to: (a) cause pollution, as defined in 75-5-103, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters. Any placement of materials that is authorized by a permit issued by any state or federal agency is not a placement of wastes within the prohibition of this subsection (1)(a) if the agency's permitting authority includes provisions for review of the placement of materials to ensure that it will not cause pollution of state waters.

### **1.3 Title 50 – Local Boards of Health**

**MCA 50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall: (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health; (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

**MCA 50-2-116. Powers and duties of local boards of health.** (2) Local boards of health may: (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department: (ii) for the removal of filth that might cause disease or adversely affect public health; (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

## **2 Funding to help repair/replace existing failing drainfields**

## **2.1 State Funding**

The State of Montana has a variety of larger grant and loan programs like the State Revolving Fund and Treasure State Endowment Program, but recipients of these programs are limited to municipalities and water and sewer districts.

The Department of Natural Resources manages the Renewable Resource Grant program that can be used by homeowners to partially fund upgrades to drainfields. For FY20/21, the total program budget is \$75,000. Applicants can receive up to 25% of the cost of a project to a maximum of \$5,000.

DNRC also had a County grant program where up to two \$50,000 grants can be made to Counties to make funds available for private septic tank repair/replacement. The program requires a 50% match from the receiving county. No money was budgeted for this program in FY 20/21.

## **2.2 Federal Funding**

USDA-Rural Development has a grant and loan program that can be used for single family residence upgrades for drainfields. Applicants must meet low income eligibility criteria for a loan and must be over age 62 from grants. The total allocation for Montana in FY19 was \$75,752.

## **2.3 Local Funding**

The Department is not aware of any local funding sources to upgrade failing drainfields other than the DNRC state funding match described in Section 2.1.

## **2.4 Examples from other states**

Several other states provide funding or incentives to upgrade failed systems. These generally are in the form of grants, low interest loans or tax credits.

- Kentucky has a grant program that covers the cost of septic repairs for individuals whose income is less than 55% of the poverty level set by HUD.
- Pennsylvania provides low interest loans to homeowners who repair or replace failing systems. The maximum loan amount is \$25,000 and interest rates range from 1.75% to 2.8%.
- Massachusetts has a state income tax credit available for septic repairs that returns up to 40% of the cost for septic repairs, to a maximum credit of \$6,000.
- Florida has an incentive program where up to \$10,000 of the cost for an advanced treatment system will be reimbursed if the property owner upgrades from a conventional treatment system.

## **3 Verifying systems were constructed in accordance with approved plans**

The Department reviews 900 to 1,000 files a year and does not have staffing levels to support inspections of water, wastewater and storm water facilities. The Department predominately

relies on as-builts to ensure that facilities were constructed in accordance with the approved plans. As-builts are plans that show how the project was actually constructed. As-builts are generally required for larger and more complex projects but not for smaller, simpler projects. However, anyone receiving a subdivision approval is required to follow the provisions of that approval in order to ensure that public health and the environment are protected. If a subdivision is not constructed in accordance with an approval then the developer may be subject to civil penalties either if a complaint is filed and a violation is confirmed, pollution occurs, or through the courts.

### **3.1 Public Water and Wastewater systems**

Public water and wastewater systems are those that serve 25 or more people for 60 or more days a year. Designers and engineers of public water and wastewater systems are required to submit a certification letter prior to use of the installed components that the facilities were constructed in accordance with the plans and specifications approved by the Department. Construction as-builts are required to be submitted within 90 days following construction. Public Water Bureau staff inspect every public water system once every 3-5 years depending on the system type, so they can verify that the visible components were correctly installed. Public Wastewater systems are not inspected unless they have a Water Protection Bureau discharge permit.

### **3.2 Non-public water and wastewater systems**

Non-public systems are those that do not serve 25 or more people for 60 or more days a year. The following non-public water and wastewater systems require certification and as-builts, identical to the procedure described above for public systems.

- Multiple user water systems with six or more connections
- Multiple user (3 or more) wastewater systems that discharge more than 2,500 gpd or serve 10 or more living units
- Cut, fill and artificially drained wastewater systems
- High strength wastewater treatment systems
- Alternative wastewater collection systems
- Raw wastewater pumping stations
- Elevated sand mounds
- ET and ETA systems
- Gray water irrigation systems
- Intermittent and recirculating sand filters
- Aerobic, chemical and alternate advanced treatment systems.

### **3.3 Storm water systems**

Certification and as-builts are required for storm water systems serving subdivisions with six or more lots or those that serve non-residential (e.g. commercial) uses with greater than 25% impervious area. Certification and as-built procedures are identical to those listed above for public water and wastewater systems.

### **3.4 County permitting of wastewater systems**

Most Counties require either a County Health Department inspection after construction or a certified installer to document (as-built) new drain field installations.

### **3.5 County permitting of water systems**

Two Counties, Missoula and Sanders, require a permit prior to construction of a non-public drinking water well. Missoula County always inspects the well after construction. Sanders County has the authority to inspect wells after construction, but this is not routinely done.

Please let me know if we can provide any additional information. Thank you for your consideration.

Regards,



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DEQ Water Quality Division